United States Court of Appeals

for the Second Circuit

APPENDIX

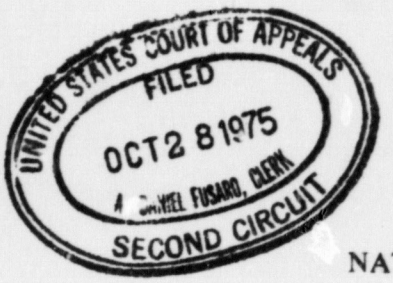
75-7457

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit



JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

vs.

NATIONAL MARITIME UNION OF AMERICA,

Defendant-Appellant-Appellee,

and

JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW,

Defendants-Appellants.

B
P/S

JOINT APPENDIX

Volume I, pp. 1A – 363A

HAROLD E. KOHN, P.A.
1700 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-9900

and

FEDER, KASZOVITZ & WEBER
450 Seventh Avenue
New York, New York 10001
(212) 239-4610

Attorneys for Defendant-Appellant, Joseph Curran

KENNETH J. FINGER
Attorney for Defendant-Appellant, Charles Snow
14 Mamaroneck Avenue
White Plains, New York 10601
(914) 949-0308

ABRAHAM E. FREEDMAN
Attorney for Defendant-Appellant-Appellee
346 West 17th Street
New York, New York 10011
(212) 929-8410

DUER & TAYLOR
Attorneys for Plaintiff-Appellant-Appellee
74 Trinity Place
New York, New York 10006
(212) 944-7482

BLOOM & EPSTEIN
Attorneys for Defendant-Appellant, Shannon J. Wall
110 East 42nd Street
New York, New York 10017
(212) 687-6050

(8866)

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N.J. (201) 257-6850 | New York, N.Y. (212) 563-2121 | Philadelphia, Pa. (215) 563-5587 | Washington, D.C. (202) 783-7288

13

PAGINATION AS IN ORIGINAL COPY

INDEX TO JOINT APPENDIX

Docket Entries	1A
Complaint	7A
Answer to Complaint	13A
Amended Complaint	15A
Answer to Amended Complaint	22A
Trial Proceedings	
Colloquy	27A
Selection of Jury	46A
Plaintiff's Opening Statement	53A
Colloquy	59A
Defendants' Opening Statements	75A
James M. Morrissey	
Direct Examination	87A
Cross Examination	168A
Redirect Examination	197A
Recross Exmination	200A
Joseph Curran (By Deposition)	
Direct Examination	207A
Colloquy	241A
Clifford Scott Fishmann	
Direct Examination	258A
Cross Examination	291A

INDEX TO JOINT APPENDIX

Redirect Examination	295A
Recross Examination	297A
Michael D. Hess	
Direct Examination	299A
Cross Examination	306A
Carmine Fiore	
Direct Examination	308A
Cross Examination	312A
Redirect Examination	318A
Colloquy	
James Nimmo	
Direct Examination	333A
Cross Examination	352A
Joseph Curran (By Deposition) Resumed	
Direct Examination	358A
Shannon J. Wall	
Direct Examination	385A
Cross Examination	412A
Redirect Examination	412A
Gerald Tuciarone (By Deposition)	
Direct Examination	420A
Cross Examination	437A

INDEX TO JOINT APPENDIX

Colloquy	440A
Charles Snow (By Deposition)	
Direct Examination	447A
James M. Morrissey - Recalled	
Direct Examination	491A
Cross Examination	492A
Colloquy	
Stanley Gruber	
Direct Examination	525A
Cross Examination	528A
Shannon J. Wall	
Direct Examination	533A
Ralph P. Abraham	
Direct Examination	535A
Terry Lasky	
Direct Examination	545A
Charles Snow (By Deposition)	
Direct Examination	556A
Colloquy	560A
Defendants' Summation	570A
Plaintiff's Summation	580A
Charge of the Court	604A
Jury's Verdict	655A

INDEX TO JOINT APPENDIX

Plaintiff's Request to Charge	666A
Defendants' Requests For Charges to the Jury	681A
Defendants' Post-Trial Motion	687A
Affidavit of F.V. Mina	694A
Affidavit of Phillip DeWolfe, M.D.	697A
Affidavit of ARthur E. McInerney	699A
Affidavit of F.V. Mina	701A
Opinion of the District Court	703A
Judgment of the District Court	724A

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE CONNER ~~JUDGE GRIESA~~

72 Civ. 2363

IA

JURY DEMAND BY PLTFF.

Jury demand date: 6-2-72

72 CIV. 2363

TITLE OF CASE	ATTORNEY.
a JAMES H. MORRISSEY, VS. NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SHOT, JAMES NEITO, ABRAHAM E. FREEDMAN, AND CHARLES SOVEL	For plaintiff: ~~KELLEY & DONNELLY~~ ~~200 PARK AVENUE,~~ ~~N.Y.C. 10017 N.Y. 10017~~ Duer & Taylor 74 Trinity Place, NYC 10006 - 944-7482 $15 For defendant: Nicholas A. D'Onofrio (Dept Freedman & Sovel) 123 Willai St. NY 10038 WO 4-2700 Hart & Hume (for Charles Sovel) 10 East 40th St. NY 10016 686-0920 (also for Abraham E. Freedman)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		6/5	Healey & D.	15—	
			6/5	Clerk		15—
J.S. 6 mailed 7-14-75	Marshal					
Basis of Action:	Docket fee					
LABOR MANAGEMENT & DISCLOSURE ACT. 29 U.S.C.	Witness fees					
Action arose at:	Depositions					

JAMES M. MORRISSEY, VS. NATIONAL MARITIME UNION OF AMERICA ET

72 CIV. 2363

~~JUDGE GRIESA~~

DATE	PROCEEDINGS	Date Order Judgment N
~~[illegible]2-72~~	~~FILED COMPLAINT. ISSUED SUMMONS.~~	
[illegible]- 1- 72	Filed Stip & Order extending time of deft C. Sovel to answer etc. re: complaint to Aug. 4 1972. So Ordered- Brieant J	
[illegible]21-72	Filed ANSWER of defts. Wall, Snow Curran, Nimmo and Natl. Maritime Union of America to complaint, and demand for Interrogatories.	NAD
[illegible]31-72	Filed Answers to Interrogatories.	
[illegible].7-72	Filed ANSWER of Charles Sovel to complaint.	H&H
[illegible].21-72	Filed Request for Production and Copying.	
[illegible].22-72	Filed Notice of Deposition upon oral examination.	
[illegible].14-72	Filed summons with marshal's ret. Served: Shannon J. Wall by Charles Sovel on 6/6/72. Joseph Curran by by Sec. of Natl. Mar. Union of America on 6/23/72. UNABLE TO Locate James Nimmo. Abraham E. Freedman by Sec. Natl. Maritime Union on 6/23/72. Charles Sovel on 6/6/72. Charles Snow by Sec. National Maritime Union on 6/23/72.	
[illegible]p 11,72	Filed defts Notice of cross-Notice of deposition. ret 10-30-72	
[illegible]p 11,72	Filed additional summons & returns-served Shannon J. Wall on 8-15-72 all other defts on 7-17-72.	
Sep 11-72	Filed defts CharlesSovel & Abraham E. Freedman, notice of motion, Re; Dismiss Action. Ret, Sept 26, 1972.	
[illegible]p.13-72	Filed defts National Maitime Union of America, Joseph Curran, S.J. Wall Charles Snow & James Nimmo Objections to request for Discovery & Inspection.	
[illegible]p.19-72	Filed Defts CHARLES SOVEL objections to request for production & coping.	
[illegible]p.20-72	Filed affdvt & notice of motion of defts SNOW & CURRAN, for an order pursuant to Rule 26 F.R.C.P. protecting the above named defts from being examined. Ret:10-3-72.	
[illegible]p22-72	Filed affdvt in opposition to defts motion seeking various forms of relief Rule 12(b) [illegible] F.R.C.P.	
[illegible]p.26-72	Motion filed 9-11-72 respectfully referred to Judge Griesa with his consent TENNEY, J.	
[illegible].10-72	Filed Memo Endorsed on motion filed 9-11-72. Motions of defts Freedman & Sovel to dismiss complaint DENIED. So Ordered. (mailed notice) GRIESA, J.	
[illegible].11-72	Filed pltffs affdvt in opposition to the motion of defts Curran & Snow under Rule 26(c) for a protective order disallowing any oral depositions.	
[illegible].11-72	Filed pltffs memorandum of law in support.	
[illegible].11-72	Filed Reply affdvt of deft Charles Sovel on motion pursuant to Rule 12.	
[illegible].11-72	Filed pltffs surreply affirmation in opposition.	
[illegible].11-72	Filed pltffs memorandum of law.	
[illegible].11-72	Filed affdvt of Charles Snow.	
[illegible].11-72	Filed defts Curran & Snow's supplemental affdvt.	
[illegible].11-72	Filed Memo Endorsed on motion filed 9-20-72 by defts Curran, Snow for a protective order. Motion withdrawn as to deft Curran at hearing 10-6-72. Motion DENIED as to deft Snow, without prejudice to renewal upon further factual showing regarding Mr. Snow's physical condition. So Ordered (mailed notice) GRIESA, J.	
[illegible]. 25-72	Filed ANSWER of deft Abraham E. Freedman.	H&H
[illegible]-73	Filed Transcript of [illegible] proceedings, dated 10-6-72	
May 24-73	Filed Ptffs Interrogatories addressed to the deft.	
May 24-73	Filed Pltffs request to admit.	
[illegible]. 19-73	Filed defts National Maritime Union of America's objections to Interrogatories.	
[illegible]. 19-73	Filed defts' (Freedman & Sovel) answers to interrogs.	
[illegible]y 24-73	Filed stip. & order extending time of defts. Freedman & Sovel to serve & file answers to interrogs. to 7-25-73--Griesa, J.	
[illegible]. 26-73	Filed defts' answers to interrogs.	
[illegible]. 31-73	Filed stip. & order substituting attys. for the pltff--Griesa, J.	

cont'd on page 2

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED / EMOLUMENTS RETURNS
Nov. 28-73	Filed pltff's notice to take deposition of the NYC Police Dept.	
Nov.29-73	Filed pltf. notice of deposition of Prudential-Grace Lines.	
Nov.29-73	Filed pltf. notice of deposition of U.S. Lines.	
Nov.29-73	Filed pltf. notice of deposition of American Export-Isbrandtsen Lines.	
1-9-74	Pretrial hearing held	
Jan. 9-74	Filed order that pltff's notices to take depositions of Prudential-Grace Lines,et al is vacated and any and all subpoenas issued re: said depositions are quashed; that depositions taken by the pltff in this matter shall be in connection with the arrest of the pltff. on 7-1-71, and the legal proceedings subsequent thereto alleged in the complaint; that the foregoing is without prejudice to the pltff. making application to the court for additional discovery beyond the area of time immediately before and after the pltff's arrest upon a showing by the pltff. of the necessity for such additional discovery-Griesa,J.-mailed notice.	
March 22-74	Filed pltff's affdvt. of Arthur E. McInerney and notice of motion for an order to amend complaint. Ret. 3-29-74	
March 22-74	Filed pltff's memorandum of law in support of his motion to amend his complaint .	
March 29-74	Filed defts. Abraham E. Freedman and Charles Sovel affdvt. of Joseph A. Bergadano in opposition to motion to amend complaint.	
March 29-74	Filed defts. National Maritime Union of America, Joseph Curran, Shannon J. Wall, Charles Snow and James Nimmo affdvt. of F.V. Mina in opposition to pltff's motion to amend complaint.	
April 4-74	Filed pltff's reply affdvt. of Arthur E. McInerney dated 4-1-74	
Apr. 9-74	Filed memorandum endorsed on motion filed 3-22-74. Motion granted. So ordered- CONNER, J. (m/n)	
Apr. 19-74	Filed pltff's notice of taking deposition of Stanley B. Gruber on 4-25-74	
Apr. 23-74	Filed pltff's notice of taking deposition of the District Attorney of the City of N.Y. on 4-29-74.	
May 7-74	Filed ANSWER of defts. Abraham E. Freedman and Charles Sovel to amended complaint.	P&H
May 10-74	Pre-trial conference held- CONNER, J.	
July 18-74	Filed defts. National Maritime Union of America, Joseph Curran, Shannon J. Wall, Charles Snow and James Nimmo ANSWER to amended complaint.	
Sep. 20-74	Pre-trial conference held- CONNER, J.	
Mar. 20-75	Mailed notice of reassignment.	
4-4-75	PRE-TRIAL CONFERENCE HELD BY Ward	

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Apr 11.75	Filed Defts'. (Freedman & Sovel) trial memorandum.	
Apr 11.75	Filed Pltff's. trial brief.	
Apr 11.75	Filed Deft's. (National Maritime Union, et al) trial memorandum of law.	
Apr 14.75	Before Ward,J. jury trial begun.	
Apr 15.75	Trial continues	
Apr 16.75	Trial continues. Complaint vs. Freedman & Sovel dismissed with prejudice & without costs	
Apr 17.75	Trial continues. Complaint vs. Nimmo dismissed with prejudice & without costs. Verdict in favor of Pltff.	
Apr 18.75	Filed Pltff's. affidavit by Arthur E. McInerney.	
Apr 18.75	Filed Charges to Jury by F.V.Mina.	
Apr 18.75	Filed Defts. (Freedman & Sovel) requests to charge.	
Apr 18.75	Filed Pltff's. requests to charge.	
Apr 18.75	Filed Telegram to Paul J. Curran, U.S. Attorney from Irving Jaffe,Act.Asst. Atty. General	
Apr 25.75	Filed Defts'. (National Maritime Union, et al) affidavit & notice of motion for an order setting aside the verdict and to enter judgment in favor of the defts., ret. 5-1-75.	
Apr 30.75	Filed Post Trial Memorandum on behalf of Defts.NMU, Joseph Curran,Shannon J. Wall & Charles Snow.	
ay 2.75	Filed Affidavit of Service by Mail byMarina Majoy on 5/1/75.	
May 8.75	Filed Pltff's. memorandum in opposition to Defts'. motion to set the verdict aside.	
05-15-75	Filed Defts'. (National Maritime Union, et al) reply affidavit in support of motion to set aside the verdict.	
05-15-75	Filed Defts'. (National Maritime Union, et al) reply memorandum.	
05-19-75	Filed transcript of record of proceedings dated April 14,15,16,17, 1975.	
05-19-75	Filed Pltff's. affidavit in opposition to Defts'. (National Maritime, et al.) reply affidavit.	
05-22-75	Filed Defts'. affidavit in opposition to Pltff's. affidavit, dated 5-16-75.	
07-10-75	Filed Opinion #42767.Motion for a new trial is denied;the motion to set aside the verdict is granted insofar as it relates to the award of punitive damages against the Union, & is in all other respects denied. Pltffs. motion to recover attys fees is denied. Ward J. (mailed notice) m.t.h.	
Jul 10.75	Filed Pltffs Memorandum of Law on the issue of pltffs, attys fees.	
Jul 10.75	Filed Memo. End. on motion 4-25-75. Motion granted in part & denied. in part in accordance with,opinion filed herewith. Ward J. (mailed notice)	
Jul 11.75	Filed Affidavit by Arthur E. McInerney, in connection with pltffs. application to continue & complete the deposition of deft. Charles Snow,etc.	
Jul 11.75	Filed Affidavit by Arthur E McInerney to supplement affidavit of 8/13/75.	
Jul 14.75	Filed Amended Complaint.	

DATE	PROCEEDINGS	Dat Jud.
07-15-75	Filed Report & Instructions of Magistrate Jacobs.	
07-14-75	Filed Judgment #75,604. Ordered pltff. have judgment against defts. Nat'l Maritime Union of America, Joseph Curran, Shannon J.Wall & Charles Snow, in the amt. of $500., & pltff. have jddgment against deft. Joseph Curran in the amt. of $100,000., against deft. Shannon J.Wall in the amt. of $60,000., against deft. Charles Snow in the amt. of $10,000., for a total of $170,000., on the first cause of action; further Ordered that pltff. have judgment against defts. Nat' Maritime Union of America, Joseph Curran, Shannon J. Wall & Charles Snow in the amt. of $3,000., on the 2nd cause of action; & Pltff. have judgment against deft. Joseph Curran in the amt. of $25,000., against Shannon J.Wall in the amt. of $15,000., & against deft. Charles Snow in the amt. of $20,000., for the total amt. of $60,000., on the 3rd cause. & that the complaint be dismissed as against defts. James Nimmo, Abraham E. Freedman & Charles Sovel. Clerk Approved - Ward J. Entered 7-15-75 (mailed notice)	
7-28-75	Issued execution on Judgt. #75,604, against dft. Charles Snow in the amount of $36,754.44.	
7-28-75	Issued execution on Judgt. #75,604 against dft. Joseph Curran in the amount of $131,754.44.	
7-28-75	Issued execution on Judgt. #75,604, against dft. Shannon J. Wall, in the amount of $31,754.44.	
7-30-75	Filed Judgment Creditor Notice of Deposition of Judgment Debtor Shannon J.Wall on 8-12-75.	
7-30-75	Filed Judgment Creditor Notice of Deposition of Judgment DebtorCharles Snow on 8-13-75.	
07-18-75	Filed Bill of Costs. Costs taxed in the sum of $3,254.44 in favor of pltff. , as against defts. N.M.U , Curran & Snow & Wall & addedm to the judgment. Clerk Docketed on Judgment #75,604. (	
08-04-75	Filed DEfts. Notice of Appeal from Order dtd. 7-14-75. (mailed notice)	
08-05-75	Filed Deft. Charles Snow Notice of Appeal from Order dtd 7-14-75. (mailed notice)	
08-05-75	Filed Pltffs. Notice of appeal from order dtd. 7-14-75. (mailed notice)	
08-13-75	Filed Pltffs. Notice of Deposition of Mrs. Charles Snow on 9-5-75 (supplementary proceeding to judgment)	
08-13-75	Filed Stip & Order that Shannon J. Wall oral examination is adjourned to 9-2-75; & that pending the satisfaction of pltffs. judgment as indicated the said deft. will not convey, transfer, etc. Ward J. (supplementary proceeding to judgment)	
08-15-75	Filed Consent Order that Bloom & Epstein is substituted in place & stead of F.V. Mina for deft. Shannon J. Wall. Ward, J.	
08-22-75	Filed Defts'. affidavit & Order to Show Cause for an order staying execution of the Judgment dated 7-14-75 pending disposition of the appeal, ret. 8-26-75...Ward, J.	
08-22-75	Filed Deft's. (Shannon J. Wall) memorandum in support of application to stay execution.	
08-26-75	Filed affidavit and notice of motion by the Amalgamated Bank of NY for order to instruct the Bank with respect to 2 Writs of Execution & Levies against property of defts. Joseph Curran & Charles Snow & dischargint the Bank of & from any & all liability as indicated; Ret. 9-2-75.	
08-26-75	Filed Memorandum of Law by the Amalgamated Bank of New York.	
08-26-75	Filed Memo. End. on Order to Show Cause dtd. 8-22-75. Motion denied in accordance with oral decision rendered in open court. Ward J. (mailed notice)	
08-26-75	Filed Order to Show Cause fro an order Suspending & Staying Execution & Enforcement of the Judgment. Ret. 8-26-75.	
08-26-75	Filed Memo. End on Order to Show Cause dtd. 8-26-75. Motion denied in accordance with oral decision rendered in open court. Ward J. (mailed notice)	
08-26-75	Filed Memorandum of Law on behalf of Charles Snow.	
08-26-75	Filed Affidavit by Shannon J. Wall in support of application for a stay of proceedings to enforee judgment entered.	

(Continued)

72 Civil 2368 James M. Morrissey vs. Nat'l Maritime Union of America, et al.

Pg#6

DATE	PROCEEDINGS	Date Or Judgmen
8-25-75	Filed Consent Order &that that Abrahamm E. Freedman be substuted as atty. for deft. National Maritime Union of America in place & stead of F.V. Mina. Ward J.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

JAMES M. MORRISSEY,

Plaintiff,

v.

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN and CHARLES SOVEL,

Defendants.

- -x

COMPLAINT

72 Civ. 2363

Plaintiff Demands Trial by Jury

Plaintiff, by his attorneys, Healey & Donnelly, alleges as follows:

A FIRST CAUSE OF ACTION FOR COMPENSATORY DAMAGES BASED ON THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

FIRST: Jurisdiction exists by virtue of 28 United States Code, section 1331, in that this action arises under the First Amendment of the Constitution of the United States of America and also under the Labor Management Reporting and Disclosure Act (29 United States Code, § 401 et seq.) and the amount in controversy exceeds the sum of $10,000, and by virtue of 29 United States Code, section 412, in that this action is brought to seek relief for the infringement of rights secured by section 411 of Title 29, United States Code.

SECOND: Plaintiff James M. Morrissey, at all times men-

tioned, was and still is a member in good standing of the defendant National Maritime Union of America (hereinafter referred to as NMU).

THIRD: On information and belief, at all times hereinafter mentioned, the NMU was and still is a labor organization with its principal office at 36 Seventh Avenue, New York, New York.

FOURTH: At all times hereinafter mentioned, defendant Joseph Curran was and still is President of the NMU.

FIFTH: At all times hereinafter mentioned, defendant Shannon Wall was and still is Secretary-Treasurer of the NMU.

SIXTH: At all times hereinafter mentioned, defendant Charles Snow was and still is the chief master-at-arms of the NMU.

SEVENTH: At all times hereinafter mentioned, defendant James Nimmo was and still is a master-at-arms of the NMU.

EIGHTH: On information and belief, at all times hereinafter mentioned, defendant Abraham E. Freedman was and still is an attorney-at-law acting as counsel to the NMU.

NINTH: On information and belief, at all times hereinafter mentioned, defendant Charles Sovel was and still is an attorney-at-law and a partner of or employee of defendant Abraham E. Freedman and, as such, was acting as counsel to the NMU.

TENTH: On or about the 1st day of July, 1971, defendants

NMU and Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel, all acting in their capacities as officials, employees and counsel respectively of said NMU, without probable cause therefor did infringe on the rights of plaintiff James M. Morrissey to meet and assemble freely with other members of the NMU and did infringe on the right of plaintiff James M. Morrissey to express his views, arguments and opinions as to the conduct of officers of and issues concerning said NMU and its membership.

ELEVENTH: By reason of the aforesaid, plaintiff James M. Morrissey was damaged in the sum of twenty-five thousand ($25,000.00) dollars.

A SECOND CAUSE OF ACTION
FOR COMPENSATORY DAMAGES
FOR MALICIOUS PROSECUTION

TWELFTH: Plaintiff James M. Morrissey repeats and realleges each and every allegation contained in paragraphs "FIRST" through "NINTH" of this complaint.

THIRTEENTH: On or about the 1st day of July, 1971, defendants Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel maliciously and without probable cause therefor had plaintiff James M. Morrissey apprehended and physically arrested within the National Maritime Union building, 36 Seventh Avenue, New York, New York.

FOURTEENTH: Thereafter, on or about the 13th day of July, 1971 defendants Joseph Curran, Shannon J. Wall, Charles Snow,

James Nimmo, Abraham E.Freedman, and Charles Sovel maliciously and without reasonable or probable cause therefor caused plaintiff James M. Morrissey to be arraigned on a complaint charging him with unlawful trespass, third degree, within said building, in violation of New York Penal Law, section 140.10, and disorderly conduct in violation of New York Penal Law, section 240.20/6.

FIFTEENTH: On or about the 13th day of July, 1971, on motion of plaintiff James M. Morrissey before the Honorable Peter J. McQuillan, Judge of the Criminal Court of the City of New York, the charge of disorderly conduct was dismissed.

SIXTEENTH: Thereafter, on or about the 20th day of July, 1971, defendants Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel maliciously and without reasonable or probable cause therefor continued to cause the charge of unlawful trespass, third degree, in violation of New York Penal Law, section 140.10, to be prosecuted against plaintiff James M. Morrissey before the Honorable William E. Ringel, Judge of the Criminal Court.

SEVENTEENTH: On or about the 20th day of July, 1971, on demurrer by plaintiff James M. Morrissey before the Honorable William E. Ringel, the demurrer was sustained and the complaint dismissed, thereby wholely terminating the said prosecution in favor of plaintiff James M. Morrissey.

EIGHTEENTH: By reason of the aforesaid arrest and mali-

cious prosecution of the plaintiff herein by defendants Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel, plaintiff James M. Morrissey was subject to great indignity and humiliation, pain and distress of mind and body, was prevented from attending to his affairs, was subject to an expense in the sum of one thousand ($1,000.00) dollars to procure the services of counsel in his defense to the said charge, and was injured in his good name and reputation in the community, all to his damage in the sum of twenty-five thousand ($25,000.00) dollars.

A THIRD CAUSE OF ACTION
FOR EXEMPLARY DAMAGES

NINETEENTH: Plaintiff James M. Morrissey repeats and re-alleges each and every allegation contained in paragraphs "FIRST" through "TENTH" and "THIRTEENTH" through "SEVENTEENTH" of this complaint.

TWENTIETH: Said actions of defendants Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel in infringing on the rights of plaintiff James M. Morrissey to meet and assemble freely with other members of the NMU and in infringing on the right of plaintiff James M. Morrissey to express his views, arguments, and opinions as to the conduct of officers of and issues concerning said NMU and its membership were done with malice.

TWENTY-FIRST: By reason of the malice of defendants

Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel in the aforesaid infringement of plaintiff's rights and in the aforesaid arrest and prosecution of plaintiff, plaintiff James M. Morrissey is entitled to recover of each defendant Joseph Curran, Shannon J. Wall, James Nimmo, Abraham E. Freedman, and Charles Sovel exemplary damages in the amount of two hundred fifty thousand ($250,000.00) dollars.

WHEREFORE, plaintiff James M. Morrissey demands judgment against defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel on the First Cause of Action in the sum of twenty-five thousand ($25,000.00) dollars; plaintiff James M. Morrissey demands judgment against defendants Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel on the Second Cause of Action in the sum of twenty-five thousand ($25,000.00) dollars; and plaintiff James M. Morrissey demands judgment against each defendant Joseph Curran, Shannon J Wall, Charles Snow, James Nimmo, Abraham E. Freedman, and Charles Sovel on the Third Cause of Action in the sum of two hundred fifty thousand ($250,000.00) dollars.

HEALEY & DONNELLY
Attorneys for Plaintiff

by /s/ Daniel Donnelly
Daniel Donnelly

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

JAMES M. MORRISSEY, :

Plaintiff, :

-against- : 72 Civ. 2363

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN, and CHARLES SOVEL, :

Defendants. :

- -x

The defendants NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW & JAMES NIMMO, above named, by their attorney NICHOLAS A. D'ONOFRIO; answering the complaint of the plaintiff herein; upon information and belief:

ANSWERING FIRST, SECOND AND THIRD CAUSES OF ACTION

FIRST: Denies any knowledge or information thereof sufficient to form a belief as to the allegations contained in the paragraphs or subdivisions of the complaint therein designated SECOND, EIGHTH, NINTH, FIFTEENTH, SIXTEENTH and SEVENTEENTH.

SECOND: Denies the allegations contained in the paragraphs or subdivisions of the complaint therein designated FIRST, TENTH, ELEVENTH, THIRTEENTH, FOURTEENTH, EIGHTEENTH, TWENTIETH and TWENTY-FIRST.

THIRD: Admits the allegations contained in the paragraphs or subdivisions of the complaint therein designated

THIRD, FOURTH, FIFTH, SIXTH and SEVENTH.

FOURTH: Repeats above denials for paragraphs designated "FIRST" through "NINTH", which is recited in paragraph TWELFT of the complaint.

FIFTH: Repeats above denials for paragraphs designated "FIRST" through "TENTH" and "THIRTEENTH" through "SEVENTEENTH", which is recited in paragraph NINETEENTH of the complaint.

AS AND FOR A SEPARATE AND COMPLETE DEFENSE TO THE ALLEGED CAUSE OF ACTION: THE DEFENDANT ALLEGES:

SIXTH: The plaintiff has failed to establish a basis for federal jurisdiction pursuant to 28USC1331.

WHEREFORE, defendant demands judgment dismissing the complaint herein; together with the costs and disbursements of this action.

Dated: New York, New York - July 19, 1972

Yours, etc.,

NICHOLAS A. D'ONOFRIO
Attorney for Defendants
NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW & JAMES NIMMO

BY: s/ Nicholas A. D'Onofrio
A Member of the Firm
123 William Street
New York, New York 10038

WOrth 4-2700

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

JAMES M. MORRISSEY,

Plaintiff,

-against-

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN and CHARLES HOVEL,

Defendants.

AMENDED COMPLAINT

72 Civ. 2363 WCC

Plaintiff Demands Trial by Jury

- -x

Plaintiff, by his attorneys, Duer & Taylor, alleges as follows:

A FIRST CAUSE OF ACTION FOR COMPENSATORY DAMAGES BASED ON THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT

FIRST: Jurisdiction exists by virtue of 28 United States Code, Section 1331, in that this action arises under the First Amendment of the Constitution of the United States of America and also under the Labor Management Reporting and Disclosure Act (LMRDA, 29 United States Code, § 401 et seq) and the amount in controversy exceeds the sum of $10,000, and by virtue of 29 United States Code, Section 412, in that this action is brought to seek relief for the infringement of rights secured by Section 411 of Title 29, United States Code.

SECOND: Plaintiff James M. Morrissey, at all times mentioned, was and still is a member in good standing of the defendant National Maritime Union of America (hereinafter referred to as NMU).

THIRD: On information and belief, at all times hereinafter mentioned, the defendant NMU was and still is a labor organization which at all times hereinafter mentioned maintained its principal office at 36 Seventh Avenue, New York, New York.

FOURTH: At all times hereinafter mentioned defendant Joseph Curran was President of the NMU.

FIFTH: At all times hereinafter mentioned defendant Shannon Wall was Secretary-Treasurer of the NMU.

SIXTH: At all times hereinafter mentioned defendant Charles Snow was and still is in charge of security at the NMU and is the chief master-at-arms of the NMU.

SEVENTH: At all times hereinafter mentioned defendant James Nimmo was and still is a master-at-arms of the NMU.

EIGHTH: On information and belief, at all times hereinafter mentioned, defendant Abraham E. Freedman was and still is an attorney-at-law acting as counsel to the NMU.

NINTH: On information and belief, at all times hereinafter mentioned, defendant Charles Sovel was and still is an attorney-at-law and a partner of or employee of defendant Abra-

ham E. Freedman and, as such, was acting as counsel to the NMU.

TENTH: On or about the 1st day of July, 1971, defendants NMU and Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel, all acting in their capacities as officials, employees and counsel respectively of said NMU, without probable cause therefor did infringe on the rights of plaintiff James M. Morrissey to meet and assemble freely with other members of the NMU and did infringe on the right of plaintiff James M. Morrissey to express his views, arguments and opinions as to the conduct of officers of and issues concerning said NMU and its membership.

ELEVENTH: By reason of the aforesaid, plaintiff James M. Morrissey was damaged in the sum of Twenty-Five Thousand ($25,000.00) Dollars.

A SECOND CAUSE OF ACTION
FOR COMPENSATORY DAMAGES
FOR MALICIOUS PROSECUTION

TWELFTH: Plaintiff James M. Morrissey repeats and realleges each and every allegation contained in paragraphs "FIRST" through "NINTH" of this complaint.

THIRTEENTH: On or about the 1st day of July, 1971, defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel maliciously and without probable cause therefor had plaintiff James M. Morrissey apprehended and physically arrested within the National Maritime Union building, 36 Seventh Avenue, New York,

New York.

FOURTEENTH: Thereafter, on or about the 13th day of July, 1971, defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel maliciously and without reasonable or probable cause therefor caused plaintiff James M. Morrissey to be arraigned on a complaint charging him with unlawful trespass, third degree, within said building, in violation of New York Penal Law, Section 140.10, and disorderly conduct in violation of New York Penal Law, Section 240.20/6.

FIFTEENTH: On or about the 13th day of July, 1971, on motion of plaintiff James M. Morrissey before the Honorable Peter J. McQuillan, Judge of the Criminal Court of the City of New York, the charge of disorderly conduct was dismissed.

SIXTEENTH: Thereafter, on or about the 20th day of July, 1971, defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel maliciously and without reasonable or probable cause therefor continued to cause the charge of unlawful trespass, third degree, in violation of New York Penal Law, Section 140.10, to be prosecuted against plaintiff James M. Morrissey before the Honorable William E. Ringel, Judge of the Criminal Court.

SEVENTEENTH: On or about the 20th day of July, 1971, on demurrer by plaintiff James M. Morrissey before the Honorable William E. Ringel, the demurrer was sustained and the complaint

dismissed, thereby wholely terminating the said prosecution in favor of plaintiff James M. Morrissey.

EIGHTEENTH: By reason of the aforesaid arrest and malicious prosecution of the plaintiff herein by defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel, plaintiff James M. Morrisey was subject to great indignity and humiliation, pain and distress of mind and body, was prevented from attending to his affairs, was subject to an expense in the sum of One Thousand ($1,000.00) Dollars to procure the services of counsel in his defense to the said charge, and was injured in his good name and reputation in the community, all to his damage in the sum of Twenty-Five Thousand ($25,000.00) Dollars.

A THIRD CAUSE OF ACTION
FOR EXEMPLARY DAMAGES

NINETEENTH: Plaintiff James M. Morrissey repeats and realleges each and every allegation contained in paragraphs "FIRST" through "TENTH" and "THIRTEENTH" through "SEVENTEENTH" of this complaint.

TWENTIETH: Said actions of defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel in infringing on the rights of plaintiff James M. Morrissey to meet and assemble freely with other members of the NMU and in infringing on the right of plaintiff James M. Morrissey to express his views, arguments and opinions

as to the conduct of officers of and issues concerning said NMU and its membership were done with malice.

TWENTY-FIRST: By reason of the malice of defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel in the aforesaid infringement of plaintiff's rights and in the aforesaid arrest and prosecution of plaintiff, plaintiff James M. Morrissey is entitled to recover of each defendant, NMU, Joseph Curran, Shannon J. Wall, James Nimmo, Abraham E. Freedman and Charles Sovel, exemplary damages in the amount of Three Hundred Fifty Thousand ($350,000.00) Dollars.

WHEREFORE, plaintiff James M. Morrissey demands judgment against defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel on the First Cause of Action in the sum of Twenty-Five Thousand ($25,000.00) Dollars; plaintiff James M. Morrissey demands judgment against defendants NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel on the Second Cause of Action in the sum of Twenty-Five Thousand ($25,000.00) Dollars; and plaintiff James M. Morrissey demands judgment against each defendant, NMU, Joseph Curran, Shannon J. Wall, Charles Snow, James Nimmo, Abraham E. Freedman and Charles Sovel, on the Third Cause of Action in the sum of Three Hundred Fifty Thousand ($350,000.00) Dollars, together with whatever other, further or different relief the Court deems just in the

circumstances, and the costs and disbursements of this action including but not limited to a reasonable attorneys' fee as provided by LMRDA.

DUER & TAYLOR

By s/ Arthur E. McInerney
Arthur E. McInerney
Attorneys for Plaintiff
Office & P.O. Address
74 Trinity Place
New York, New York 10006
(212) 944-7482

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES M. MORRISSEY,	:	
Plaintiff,	:	ANSWER TO AMENDED COMPLAINT
-against-	:	72 Civ. 2363 WCC
NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, JAMES NIMMO, ABRAHAM E. FREEDMAN and CHARLES SOVEL,	:	
Defendants.	:	

Defendants, NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW and JAMES NIMMO, by their attorney F. V. MINA, Esq., answering the amended complaint of the plaintiff herein upon information and belief allege:

ANSWERING THE FIRST CAUSE OF ACTION FOR COMPENSATORY DAMAGES BASED ON THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT:

FIRST: Deny each and every allegation contained in paragraphs designated FIRST, SECOND, TENTH and ELEVENTH.

SECOND: Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated EIGHTH and NINTH.

THIRD: Admit each and every allegation contained in paragraphs designated THIRD, FOURTH, FIFTH, SIXTH and SEVENTH.

ANSWERING THE SECOND CAUSE OF ACTION FOR COMPENSATORY DAMAGES FOR MALICIOUS PROSECUTION:

FOURTH: Deny each and every allegation contained in paragraphs designated THIRTEENTH, FOURTEENTH, SIXTEENTH and EIGHTEENTH.

FIFTH: Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated FIFTEENTH and SEVENTEENTH.

SIXTH: Repeat and reiterate each and every answer to the allegations set forth in paragraph designated TWELFTH.

ANSWERING THE THIRD CAUSE OF ACTION FOR EXEMPLARY DAMAGES:

SEVENTH: Deny each and every allegation contained in paragraphs designated TWENTIETH and TWENTY-FIRST.

EIGHTH: Repeat and reiterate each and every answer to the allegations set forth in paragraph designated NINETEENTH.

AS AND FOR AN AFFIRMATIVE DEFENSE TO THE FIRST CAUSE OF ACTION FOR COMPENSATORY DAMAGES BASED ON THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT:

That the allegations contained in that cause of action fail to state a cause of action against the defendants, National Maritime Union of America, Joseph Curran, Shannon J. Wall, Charles Snow and James Nimmo.

AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE TO THE SECOND CAUSE OF ACTION THE ANSWERING DEFENDANTS HEREIN ALLEGE:

That the allegations therein fail to state a cause of action for malicious prosecution entitling the plaintiff to damages due to the fact that there was reasonable cause for the arrest of the plaintiff herein.

AS AND FOR A COMPLETE AFFIRMATIVE DEFENSE TO THE THIRD CAUSE OF ACTION FOR EXEMPLARY DAMAGES THE DEFENDANTS HEREIN ALLEGE:

That the acts alleged show no malice which would entitle the plaintiff to any punitive damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE THE ANSWERING DEFENDANTS HEREIN ALLEGE:

That the allegations made in the plaintiff's amended complaint are barred by the Statute of Limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE COMPLAINT HEREIN THE ANSWERING DEFENDANTS ALLEGE:

That this Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE SECOND AND THIRD CAUSES OF ACTION UPON INFORMATION AND BELIEF:

That there is another action pending in the Supreme Court of the State of New York, County of New York for the same relief and upon the same claims made by the plaintiff in the second

and third causes of action alleged in this complaint.

WHEREFORE, defendants, National Maritime Union of America, Joseph Curran, Shannon J. Wall, Charles Snow and James Nimmo, demand judgment dismissing the plaintiff's amended complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
July 16, 1974

F. V. MINA, ESQ.

s/ F. V. Mina

Attorney for Defendants
National Maritime Union of
America, Joseph Curran,
Shannon J. Wall, Charles
Snow and James Nimmo
127 John Street
New York, New York 10038
(212) 344-5333

To: HART & HUME
Attorneys for Defendants
Abraham E. Freedman and
Charles Sovel
10 East 40th Street
New York, New York 10016

DUER & TAYLOR
Attorneys for Plaintiff
74 Trinity Place
New York, New York 10006

gt:mg

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

JAMES M.MORRISSEY,

Plaintiff,

v. 72 Civ. 2363

NATIONAL MARITIME UNION OF AMERICA, JOSEPH CURRAN, SHANNON J. WALL, CHARLES SNOW, ABRAHAM E. FREEDMAN, CHARLES SOVEL, and JAMES NIMMO,

Defendants.

- -x

B e f o r e:

HON. ROBERT J. WARD,
District Judge
And a jury

New York, New York
April 14, 1975
10:00 a.m

APPEARANCES:

DUER & TAYLOR, Esqs.,
Attorneys for plaintiff
74 Trinity Place
New York, New York
ARTHUR E. McINERNEY, Esq.,
of Counsel

FRANK V. MINA, Esq.,
Attorney for defendants National Maritime Union of America, Joseph Curran, Shannon J. Wall, Charles Snow and James Nimmo
217 Broadway
New York, New York

APPEARANCES (continued):

HART & HUME, Esqs.,
Attorneys for Defendants Abraham E. Freedman
and Charles Sovel
10 East 40th Street
New York, New York
JOSEPH BERGADANO, Esq.,
of Counsel.

...

(In the robing room, counsel present)

MR. MINA: Your Honor, at this time on behalf of the defendant Joseph Curran, we would respectfully move for an adjournment on the grounds that we were informed last Wednesday that Mr. Curran had just received test results back and it was determined that he had a tumor of the colon and that he is in the hospital as of this morning to be operated on, on Wednesday.

We take a position that without Mr. Curran here to testify, the defendant will be severely prejudiced, especially in view of the nature of this action and the fact that the depositions taken of Mr. Curran were taken by the plaintiff and were never taken subject to being used as preservation of testimony.

MR. McINERNEY: Your Honor, there was no

restriction on the defendant asking Mr. Curran any questions they wanted at the time of the taking of the depositions, and it seems to me in view of your Honor's schedule particularly and, of course, we have served several subpoenas, I brought a paralegal assistant up from Philadelphia to assist me in this case,and the plaintiff is in no position financially-- he has taken time off from his ship, your Honor, and under the shipping rules he has to remain off his ship for five weeks.

Now, he is not in a financial position to do this. He had the same type thing going on during the depositions.

THE COURT: Of course, you have no objection to the defendant introducing the deposition of Mr. Curran in lieu of his personal appearance?

MR. McINERNEY: As a matter of fact, your Honor. I intend to read substantial portions of it and if your Honor directs, I will read it all.

THE COURT: I am not going to direct you to do anything, but I will suggest since his deposition was taken prior to trial and since clearly it should be admitted to the extent there are no proper objections which lie to particular questions, which I assume were reserved to trial, under those circumstances I am prepared to deny the

application for an adjournment.

Before I do, if anyone else wants to say anything, I will hear you.

MR. MINA: Your Honor, we would respectfully except to that ruling, but would request, however, in view of the ruling that in the alternative the action against Mr. Curran be severed.

THE COURT: No, I will not sever the action against Mr. Curran. That would merely multiply the number of lawsuits pending in the court.

Let me indicate that this case was reassigned to me as one which was although not yet three years old, about to beomce three years old, and, therefore, is considered by this Court to be an old case falling into the category of an emergency situation.

I held a pretrial conference in this case on April 4, 1975. At that time the parties indicated that they were ready to go to trial.

I understand that this matter of Mr. Curran's health has intervened between April 4th and now. However, under the circumstances, since his deposition is available and can be introduced pursuant to the ruling I have just made by either party for all purposes, there being no objection from the plaintiff, the application for a severance

of Mr. Curran is denied, as well as the application for an adjournment.

MR. MINA: Respectfully except.

THE COURT: Very well.

MR. McINERNEY: Your Honor, since we are in here, the jury is out there, I thought I might ask you how we are going to handle the peremptory challenges.

I understand we each have three, but since the defendants have two counsel, are there going to be additional peremptory challenges given to the plaintiff?

In effect, it is one defendant. I mean, there are several defendants, it is true, but they are acting as a team and, consequently, I would think that we would balance out the challenges.

MR. BERGADANO: May I be heard, your Honor?

THE COURT: Yes.

MR. BERGADANO: My clients, as you know, are counsel, and are in a substantially different capacity than the union officers and employees.

In that regard, your Honor, in reviewing the marked pleadings, apparently Mr. McInerney merely marked them for the answer of the union and the officers and the answers on behalf of my clients are somewhat different, naturally.

I must disagree with Mr. McInerney, because Mr. Mina's position vis-a-vis his people and mine vis-a-vis mine are quite different.

THE COURT: Each of you will have three challenges. That means the plaintiff will have three and the defendants can exercise three apiece.

Mr. McInerney has made an application that the portion of his claim which relates to counsel fees be tried to the court alone.

I personally think that that would be appropriate.

Is there any objection from either of the defendants attorneys?

MR. MINA: No objection.

MR. BERGADANO: No objection, your Honor.

THE COURT: Very well.

Then that portion of the plaintiff's case will be tried to the Court alone, as has been requested.

Is there anything else, gentlemen?

MR. BERGADANO: Yes, your Honor, I have one request, and that is as to the conduct of the trial itself and the plaintiff's proof.

The single factor that runs through the whole cause of action is the arrest. As to the others, other

than the Landrum-Griffin claim, require malice and lack of probable cause, but without the arrest as to any of those causes of action, they must fall as to any particular defendant.

So may I request, your Honor, and I do, that the plaintiff be required to show the connection of each of the defendants to the arrest or that they initiated the arrest, because failing that, that defendant must be dismissed.

THE COURT: I would think that your application in general terms is appropriate.

May I suggest taht he, it seems to me, would have to establish one of several alternatives.

No. 1, a direct connection to the arrest.

No. 2, the participation by a particular defendant in what might be considered in a criminal case to be a conspiracy to cause the arrest.

And I suppose I would also hear him at the end of the plaintiff's case if he could not establish a connection by direct evidence, that he argue that he has produced circumstantial evidence sufficient to give rise to an inference.

I would suggest that absent any of those; i.e., direct evidence, proof of a conspiracy to cause the arrest

or proof by circumstantial evidence giving rise to an inference which could be drawn by the jury that that particular defendant caused the arrest, I would think he would be out of court.

I recognize the underlying premise that there should be,must be, a causal connection established between a particular defendant and the arrest.

I'm sure you agree with that, Mr. McInerney?

MR. McINERNEY: Yes, I do, your Honor, 100%.

THE COURT: Under the circumstances, I think I have to let the proof develop, but I would be prepared to hear you at the end of the plaintiff's case if you believe that he has not established a direct connection between a particular defendant and that arrest either by direct testimony, circumstantial evidence giving rise to an inference which the jury could draw that the defendant was one of the causes of the arrest, the particular defendant was one of the causes of the arrest, or proof by some source which would be proof of an underlying conspiracy.

There you must prove a conspiracy by independent evidence. I will be looking at that.

Absent any of those, I would be receptive to a motion to dismiss as to that particular defendant.

MR. BERGADANO: May I merely point out one

further thing, your Honor.

I reviewed this, as you might expect, very carefully in the past week.

There is nothing either explicit or implied in the complaint as to the conspiracy. Each defendant is bineg charged with individually having caused the arrest and maliciously prosecuting this plaintiff.

THE COURT: You are saying even if he were to prove the conspiracy, that would be insufficient?

MR. BERGADANO: Yes, sir.

THE COURT: Let me suggest this: I recognize your statement that there has been noting proved.

MR. BERGADANO: It is not even alleged, your Honor, that is my point.

THE COURT: I'm sorry, I did mean alleged rather than proved.

I will take into consideration what you have said.

At the same time, I suppose there is an awfully close relationship between what I said about conspiracy and what I said about circumstantial evidence, giving rise to an inference.

Let me consider what you have said and let me listen to the testimony as it arises and let me suggest

that I willmake at this point no formal ruling if he proves some type of conspiracy that that, ipso facto, will result in your clients being held into the case.

I will leave that open in view of what you have said. I will listen to the evidence as it is presented.

I think that is a fair way to put it.

MR. BERGADANO: Thank you, your Honor.

THE COURT: Certainly there is a very close relationship between the circumstantial case with inferences to be drawn and a conspiracy case. They come so close that I am not prepared to cut it one way or the other.

I recognize your point and I will listen very carefully to the proof as it is presented.

MR.MINA: In that regard, your Honor, and in regard to the manner of trying the case, whether it is what Mr. Bergadano means or not, what we would respectfully request insofar as my clients are concerned, is that the plaintiff on the trial of this action be limited to first proving a connection between the defendants and the plaintiff's arrest before being allowed to bring in the question of malice on the part of any of those defendants, because that could severely prejudice any defendants that may be left in the action at the end of the plaintiff's case.

THE COURT: No, I don't see that, really, because

if he does not connect up a particular defendant with the arrest, that will go out.

What you are saying is he may demonstrate malice on the part of one and he does not connect up --

MR. MINA: Yes, your Honor, very possibly.

MR. BERGADANO: Yes, sir, very much so. That is the problem, your Honor.

MR. McINERNEY: On that, your Honor, I think that could be taken care of in the charge.

THE COURT: Not necessarily.

Obviously, malice is something that is akin to prejudice and there are certain things which are presented to a jury which could be considered by a Court to be so prejudicial as not to be cured by an instruction.

I am not going to prohibit or preclude him from presenting his case as he sees fit, but I will suggest to him that unless he is proceeding on very firm ground that proof of malice could-- I don't say it would -- could, if unsupported by proof against the defendant who remains in, result in a mistrial against that particular defendant.

I don't say it will and I don't want to preclude him from presenting his case in the manner indicated.

I have to assume at the moment he has studied his case carefully, he has researched the law and knows

the facts and as he is presenting evidence, he intends to bind that particular defendant.

If there is anybody, Mr. McInerney, who at this stage, based on what you have now, you reasonably believe you do not have a prima facie against against, any one of these defendants, I suggest that your best interests are served by consenting to a dismissal as to that particular defendant at this juncture.

MR. McINERNEY: No, your Honor, I think that we have them all.

THE COURT: Very well.

I suggest that you may put yourself in a position relative to one or another defendant where a motion for a mistrial might lie.

MR. McINERNEY: I understand, your Honor.

THE COURT: Because I really don't believe an instruction, when we are talking about malice, is a definitive cure-all.

I am not ruling on that one either, but I leave the door open to an appropriate application.

MR. McINERNEY: Your Honor, at the conclusion of the proof, of course, I certainly do intend to amend my pleadings to conform to the proof, which would, I think, cover the problem that we talked about earlier with the

fine line between the inferences that could be drawn from the circumstantial evidence and the conspiracy, and I would ask your Honor to consider that,also, as we go along.

THE COURT: I will consider it at the time you make the application.

MR. McINERNEY: Yes, at that time, your Honor.

THE COURT: I say to you all, there is such a close line there that if the proof were appropriate to the pleadings as presently presented, it would probably be appropriate for the Court to permit an amendment of the pleadings to conform to the proof, but, again, I am not going to rule on that in advance of the full presentation.

MR. McINERNEY: Yes.

THE COURT: Is there anything else?

MR. BERGADANO: Yes, your Honor, one thing.

Counsel are aware of it and I'm sure your Honor is aware of it from studying the case.

As you know, I represent two lawyers who were counsel to the union. Whatever discussions-- now, whether there were discussions, although that may be within privilege, I have to raise the attorney-client privilege throughout this trial as to my clients as to any discussions they had with officials or employees of the union relating to matters whether acting solely as counsel as opposed to

association or other than legal.

Insofar as this case is concerned, it has been established, I believe, that throughout this entire matter they acted only as counsel, so since the privilege is not the attorneys to waive, I must raise that throughout the trial and I will.

THE COURT: Yes. I consider that you have now raised it and I suggest anything that is relative and material to the issues here presented, the claim of privilege timely asserted is overruled.

The reason I say that is I don't want you to be in the position of standing up every two minutes in front of the jury and restating the privilege.

If you get to a particularly sensitive point, I suggest you request coming to the side bar.

MR. BERGADANO: Oh, yes, sir.

THE COURT: I didn't want to put you in the position of having you stand up in front of the jury each and every time.

MR. BERGADANO: It only disrupts the trial. I fully agree if anything like that comes up it should be at the side bar.

I will have to raise it because the privilege is not our clients to waive.

THE COURT: I recognize it and I indicated from what I said this is the way we should proceed.

Is there anything further?

MR. MINA: Yes. I think one very important point that should be decided before we start the trial, because it has been a problem throughout all the pretrial procedures, in this case there is an allegation of malice, a necessary allegation.

The question has come up as to what time limit may be imposed on the plaintiff insofar as going into malice.

Judge Connor, I believe--

MR. BERGADANO: Both Judge Connor and Griesa.

MR. MINA: Both judges did put time limitations on this.

THE COURT: They put time limitations, as I understand the papers I read over the weekend, relative to the pretrial discovery.

MR. MINA: Yes, your Honor.

THE COURT: They didn't seem to make any binding decision that I read relative to the proof at trial.

MR. BERGADANO: That is correct, your Honor, they did not extend it to the trial.

THE COURT: Let me return to plaintiff's counsel.

I think you have to be reasonable in what you present, not go back to the Year One or when these men first met in 1938 or whatever it may have been.

How far do you plan to go back in your presentation?

MR. McINERNEY: Your Honor, let me say this, that my presentation will be rather swift through the plaintiff. My evidence will come through the plaintiff on this, with some small excpetions on certain-- for example, Judge Connor did permit us to go past 1969 with respect to Mr. Curran, so I do have some evidence to present with respect to Mr. Curran that goes back to the year 1966.

I might just call this to your Honor's attention,that in 1966 there was a union election, you see, and as a result of that election Morrissey brought -- the plaintiff in this action -- brought charges against the union to the Department of Labor, had that election set aside and --

THE COURT: That was a case where there was a trial before Judge Motley?

MR. McINERNEY: Judge Motley, your Honor. It was Wurtz v. the NMU.

THE COURT: I just want to state for the record

so you all know, I testified as a witness in that case.

Do you know that?

MR. McINERNEY: I didn't know it.

I have some vague recollection. I did read the record, but I read the record in connection with the first action I had for Mr. Morrissey in 1968 or 1969,and I have some vague recollection of it.

THE COURT: I just want you all to know that, because I had had a prior case which had been settled when I was here in the U.S.Attorney's Office around 1960 and the matter of the prior settlement became in some way germane to the lawsuit before Judge Motley and I was called to testify in that lawsuit, which would have been about 1966 or 1967, and I testified on direct examination for ten minutes or so, if my memory serves, and to the best of my recollection was not cross-examined, and then we passed on.

I don't believe that that is anything that will prejudice me one way or the other, other than I am somewhat familiar with this union and its problems.

What you are saying to me is that you plan to present that as background?

MR. McINERNEY: Yes, your Honor.

As a matter of fact, I would like to do this:

This is what I am going to ask Mr. Morrissey: when he became associated with the union and tell us what happened after his association with the union, and so on and so forth.

THE COURT: When did he become associated?

MR. McINERNEY: 1941 or 1942.

I went over this testimony with him. The time on that will take no more than five or six minutes and it is just background how he came to run for secretary-treasurer against Mr. Wall in 1966, and he did serve as an officer in the union in-- I might be off a year -- 1954 to 1958, something like that, so it is germane to the fact that he is familiar with what goes on within the union.

MR. MINA: Your Honor, again, this is exactly what we are talking about. The time he takes to testify has nothing to do with the effect that that testimony may have on the jury, especially as to someone who may very well be out of this case at the end of the plaintiff's case.

MR. McINERNEY: I will represent this to the Court, that up until 19-- there might be one minor incident when Mr. Morriseey resigned from his job as an officer from the union,but up until that time there will be nothing said that will have any effect on malice; it will just be

purely background information to lead the jury to where --

THE COURT: Gentlemen, I am going to permit the testimony on two representations by plaintiff's counsel.

No. 1, that it be brief and No. 2, that it not encompass in any questions asked on direct examination anything that might be considered a basis for malice.

In other words, what I am going to permit you to do, counsel, is tell when he became a member of the union and if he ran for office at some point and was elected, he may state that for a fact; if he ran for office again and was defeated, he may state that for a fact.

But I don't want testimony creeping in that in 1956 he was defeated because Mr. Curran put the ax in on him.

MR. McINERNEY: Nothing like that.

THE COURT: If they want to bring that out on cross-examination, fine.

If you do get in something like that, you face from me an application by them to strike, together with a very strong statement, which I will make to the jury.

MR. McINERNEY: Your Honor, I repeat that there is the one question where he resigned from the union, as a union official, and that was previous to

1966. Your Honor will permit that?

THE COURT: Yes.

MR. McINERNEY: All right.

THE COURT: But I don't want to get in he resigned because Mr. Curran did this to him or Mr. Freedman did that to him.

MR. McINERNEY: No names mentioned.

THE COURT: He resigned, period.

MR. McINERNEY: His reason for resigning, I will tell your Honor what his reason was --

THE COURT: I don't want to know his reason at this point. His reason I'm not sure is admissible, frankly, at this point, because it is malice on the other fellow's part.

So I think if you were to ask the question, "What was your reason for doing it," that would probably be subject to an objection and I think you would be better off in the context of this case, using this as background; a long membership and relationship with the union.

That explains certain things and I would be willing to permit it.

But anything that smacks of infighting and that type of thing at that very early stage in time I think would be so remote as to be prejudicial, the same as when

we have in a criminal case an arrest that took place or a conviction that took place too many years before.

MR. McINERNEY: Yes.

THE COURT: Anything else?

MR. McINERNEY: Your Honor, he worked with Curran's administration at that time, you see. That's the only thing.

THE COURT: That is all right. You can get that in. I don't see any problem there.

Anything else, gentlemen?

MR. McINERNEY: Not from me.

MR. MINA: No, your Honor.

MR. BERGADANO: Nothing else.

(In open court)

THE COURT: Clerk, will you call the case which was set down for trial this morning.

THE CLERK: James M. Morrissey v. National Maritime Union of America, et al.

THE COURT: Plaintiff ready?

MR. McINERNEY: Plaintiff is ready, your Honor.

THE COURT: For the defendants Sovel and Freedman, Mr. Bergadano?

MR. BERGADANO: Yes, your Honor, ready.

THE COURT: For the other defendants, Mr.Mina?

MR.MINA: Ready, your Honor.

THE COURT: Very well.

Ms. Kruger, will you swear the entire panel and then draw all 25 names in order for jury service.

...

(The panel of prospective jurors was sworn.)

(A jury was duly impaneled and sworn)

(Two alternate jurors were sworn)

THE COURT: I should like to address myself briefly to the six regular and two alternate jurors who have been selected to serve in this case.

Following these brief remarks, we will take a short recess. You will go into your jury room, which is in the back of the courtroom, and there you will be able to leave your coats and relax; come out very shortly after the recess is called and you will hear the opening statements.

First the plaintiff will make an opening statement outlining the plaintiff's case; then the two counsel representing the defendants may also, if they choose, make opening statements outlining their respective cases.

The opening statements which you will hear

are not evidence, but are merely to aid you in understanding the significance of evidence when it is introduced.

After the opening statements are made, the plaintiff will proceed to introduce evidence.

At the conclusion of the plaintiff's case, the defendants may introduce evidence. In the event they do, plaintiff may then come back and present what we call rebuttal evidence.

At the conclusion of all the evidence, the attorneys will make their closing arguments, sometimes called summations, to you.

After summations, I will deliver my charge, following which you will deliberate and arrive at your verdict.

The law applicable to this case will be contained in the instructions I give you during the course of the trial and in my charge and as I have indicated already, it is your duty to follow all such instructions.

It is your function to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing, you must not indulge in guesswork or speculation.

The evidence which you are to consider consists of the testimony of witnesses and the exhibits admitted in evidence.

The term "witness" means anyone who testifies in person or by deposition. Deposition means that the testimony of the particular person was taken prior to trial with a reporter, a court reporter present, has been transcribed, signed and sworn to and it may be read to you and should be considered by you just as carefully as any other evidence which is presented.

The admission of evidence in court is governed by rules of law. From time to time it may be the duty of the attorneys to make objections and my duty as a judge to rule on those objections and, thus, whether you can consider certain evidence.

You must not concern yourselves with the objections or the Court's reasons for its rulings. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken. If I say "strike it," strike it and disregard it, forget it as though it had never occurred.

The evidence is what remains after the witness has answered and after I have let whatever answers have been made stand in the record for you to consider.

Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and in applying the law, but they are not evidence.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the parties or their counsel.

No statement or ruling or remark which I may make during the presentation of testimony is intended to indicate my opinion as to what the facts are.

You are to determine the facts. In this determination you alone must decide upon the believability of the evidence and its weight and value.

In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the suit, the relation of the witness to the parties, the inclination of a witness to speak truthfully or not, the probability or improbability of the witness' statements, and all other facts and circumstances in evidence.

Thus, you may give the testimony of any witness just such weight and value as you believe the testimony of such witness is entitled to receive.

Until this case is submitted to you for your deliberations, you must not discuss it with anyone or as you come and go from this court, remain within the hearing of any person who might be discussing the case, nor should you read any newspaper article, listen to any radio broadcast nor view any television program which discusses the case.

In the event any of these things occur, you are directed to report the matter to me at once.

Only after the case has been completed and has been submitted to you following my charge, can you and should you discuss it, and then only in the jury room when all members of the jury are present.

You are to keep an open mind on all issues in the case and are not to decide any issue in this case until the case is submitted to you for your deliberations following the Court's charge.

Those are my preliminary instructions.

We will now take a five-minute recess. The Clerk will show you the jury room. You may leave your coats in the jury room. We will return and you will at that time hear the opening statements of counsel.

The jury is excused for a five-minute

recess.

Counsel are excused as well.

(Recess)

(In open court, jury present)

THE COURT: Ladies and gentlemen, as I indicated when I made my preliminary remarks, the first order of business will be opening statements.

You will first hear from Mr. McInerney on behalf of the plaintiff and then you will hear from each of the defense counsel.

Mr. McInerney, you may proceed.

(Pause)

THE COURT: Before we start, let me make one point.

You will be hearing testimony during the course of this case which will all be taken down by the Court reporter. You are not permitted to make notes. However, when you go to deliberate in this case, should you require any of the testimony to be read back to you so that if your recollection, which is the thing that counts here, requires refreshing, you will send a note out from your jury room and you will be brought into the courtroom and our Court reporter will read back to you whatever portions of the testimony you want heard

a second time.

I recotnize none of us have a photographic memory. Among eight people there is probably a pretty good recollection of what goes on.

We will have that available, so you just might keep that in mind. That does not mean you should concentrate any the lesson anything that is said, but it does mean that the testimony will be available to you should you require it.

We will nowproceed to the operning statements.

MR. McINERNEY: May it please the Court, ladies and gentlemen of the jury:

As you know, my name is Arthur E. McInerney, and I represent the plaintiff in this case, James Morrissey.

As Judge Ward told you, what I am about to say to you is not evidence, nor will what Mr. Bergadano and Mr. Mina say to you be evidence. This segment of the trial is like a preface to a book or the prelude to a play. It is a preview intended to give you an idea of what is coming and what this trial is all about.

You ladies and gentlemen are the triers of facts in this case. It is an important case. It may well be a historic case.

We will show you a bird's eye view of the

corruption which existed within a labor union and how one man, not a saint by any means, but a man of courage, sought to oppose that corruption, to expose it, and finally to eliminate it, and we will show you what happened to him for taking a brave and courageous stand against a powerful, tyrannous and repressive leadership in this labor union, the National Maritime Union of America.

MR. MINA: Your Honor, at this time I am going to have to object. The opening statement -- and I don't like to object to an opening statement, but we are here on a cause of action for malicous prosecution and under the Landrum-Griffin Act relating to the arrest of Mr. Morrissey on July 1st, 1971. That is the only issue in this case.

THE COURT: That is correct.

I would suggest that the only purpose of the prior remarks could be to inflame the jury and I do not encourage that, Counsel.

You are here to present an outline of the facts that you wish and intend to present in order to support a charge of malicious prosecution.

You are not here for any other purpose.

Let us have a presentation of the facts you intend to present to support the charge which is contained

in your complaint.

MR. McINERNEY: We will show you that the National Maritime Union and the individual defendants violated Jim Morrissey's rights that are guaranteed by the First Amendment of the Constitution of these United States, that they violated his rights granted to him by Congress, the Congress of the United States, and granted to all human members under what is known as the Bill of Rights and the Landrum-Griffin Act.

We will show you that they violated his common law rights by instigating his arrest and prosecution on criminal charges and we will show you that all of this was not done inadvertently or by accident, but it was done deliberately with malevolence, malice, and ill will.

We will show you that this deep and abiding malice which the union officials and union counsel bore toward the plaintiff, this hatred they had for Jim Morrissey, grew out of a long history of the efforts on Jim Morrissey's part to keep the NMU on the straight and narrow, to prevent the misuse of union funds, to see to it that the NMU elections were conducted honestly and according to Hoyle.

MR. MINA: Objection.

Your Honor, again, this has no relation to the

lawsuit that we are trying here.

THE COURT: Let me suggest this.

If it is not supported by the proof that is presented and admitted in this trial, it has no place in the opening statement.

I want to try this lawsuit, an action for, in essence, malicious prosecution.

Let us move on.

MR. McINERNEY: And to see to it that the provisions of the Landrum-Griffin Act were observed by the union officials.

We will show you this by the statements published from time to time in the official organ of the NMU, which was edited by the officers of the NMU, the National Office of NMU, the high officers of the NMU, and we will show it to you by other evidence as well.

We will show you that the malice and hatred of the several defendants dated back for many years and that it existed in full bloom at the time of Jim Morrissey's arrest on July 1st, 1971.

We will show you that regardless of the formal charges brought against him, Jim Morrissey's arrest was, in fact, for his passing out leaflets, anti-administration leaflets in the NMU hall, the hall built and maintained

with Jim Morriseey's dues, the hall in which he had an absolute right to be.

We will show you that there was no reasonable basis for his arrest and criminal prosecution and that that was finally established by a dismissal of all the charges brought against him in the New York Criminal Court on July 20, 1971.

MR. BERGADANO: Your Honor, I hesitate to object, but I believe what counsel is now saying is a matter of law which your Honor will have to determine and decide and not a question of fact for the jury since it relates to matters which are before your Honor in the briefs and in the proposed charge.

THE COURT: I don't think he is saying that actually, Counsel, and the jury is already aware that on the law it will be what I will tell them.

They will accept the law from the Court. His burden is to prove certain facts. He is outlinging what he believes he intends to prove and under the circumstances I am going to permit him to outline the proof as he sees it.

Needless to say, counsel are not to instruct the jury, either counsel, any counsel, on any matters of law; that is a province, you well know, which is left

to the Court.

You may proceed, sir.

MR. McINERNEY: Thank you, your Honor.

Quite apart from the criminal charges and quite apart from the malicious prosecution count in this case, there are the charges relating to the violation of Jim Morrissey's rights under the Landrum-Griffin Act, which I mentioned to you.

Now, with respect to that, we will show you that when the defendants on July 1st, 1971, had Jim Morrissey expelled from the hall, they did not serve him with written specific charges; they did not give him a reasonable time to prepare a defense; they did not afford him any hearing; they simply called in the police and had him carted away.

Now, we ask you to be patient, as Judge Ward indicated, and listen to all of the evidence as it is presented to you.

Don't just listen to what Jim Morrisey the plaintiff says about it and make up your mind; but wait, listen carefully to what the defendants have to say.

Let's see what they have to say about it.

And when it comes to evaluating the evidence and weighing it and reaching your conclusion, all we ask

is that you use your good common sense.

Finally, we ask you to bear in mind the fact that Jim Morrissey has waited over two and a half years for this case to come on for trial, consoled by the fact that he knew that it was to be decided by a jury just like you.

This is his day in court. It is here and now. It will not come again.

We will ask you ladies and gentlemen of the jury, at the conclusion of all the evidence, to render a verdict in favor of the plaintiff Jim Morrissey and to award him substantial damages, both punitive and compensatory, based on all the evidence in accordance with the instructions you receive from the Court and in fulfillment of the oath you have taken as jurors.

I thank you.

MR. MINA: Your Honor, at this time, on behalf of the defendants National Maritime Union, Curran, Wall, Snow and Nimmo, I would like to make a motion out of the hearing of the jury.

THE COURT: You may proceed to the side bar.

(At the side bar)

MR. MINA: Your Honor, at this time we would move to dismiss based on the plaintiff's opening the first

cause of action based under the Landrum-Griffin Act on the grounds that the arrest of the plaintiff is not now, has never been, a ground for Landrum-Griffin violations.

There has been no allegation made by the plaintiff on his opening that he will prove nor has there ever been an allegation of it to be the case, that the plaintiff lost any of his rights insofar as his union membership was concerned, and that is the only thing that Landrum-Griffin deals with.

THE COURT: Didn't you make a motion before another judge to dismiss the complaint in this case that was denied?

MR. MINA: No, your Honor.

THE COURT: I thought I saw a Rule 12 motion in this rather voluminous file.

MR. MINA: No, your Honor.

MR. BERGADANO: If it was, it was mine, but on other grounds, your Honor, not on the ones we are asserting now, and I am joining in this motion and particularly, your Honor, since there are absolutly no cases, nor in the legislative history in the Landrum-Griffin Act anything about counsel in the unions and arrests; the entire development of the Act had to do with abuse of members and their membership of their

union,and the officials of the union, and corrupt unions, as your Honor may recall the hearings, and the statute itself makes no mention whatsoever,nor did any of the legislative history have anything to do with counsel for the union, and acting in the capacity as counsel.

So that I have that additional ground insofar as my clients, your Honor.

I have a further motion, your Honor.

This plaintiff commenced another action across the street in Supreme Court on the second and third causes of action, which action has been pending since June of 1972, simultaneously with this action in which they have not prosecuted actively since they apparently chose to come this course, but that action has been pending and that action, insofar as my client Mr. Freedman is concerned, was commenced prior to this action and as to Mr. Sovel, I'm not sure of the date but they are very close, so on the second and third causes of action insofar as my clients are concerned, I raise that.

MR. MINA: Additionally, as a ground to dismiss thefirst cause of action, I also respectfully refer the Court to our trial memoranda and point out if it is the plaintiff's contention that he does come under the Landrum-Griffin Act, then he is required by the

terms of that Act to have tried remedies within the union, administrative remedies, before ever coming to this courthouse and that was never done.

MR. BERGADANO: I join in that, too, your Honor. He has not alleged that he ever tried any of the administrative remedies which might be available to him or that this violated any of his administrative remedies which he otherwise had, which is one of the things so specified in the Act.

THE COURT: Mr. Mina, do you have a trial memorandum?

MR.MINA: Yes, your Honor. We brought it in Friday.

MR. BERGADANO: That is mine, your Honor.

THE COURT: Yes. I have yours.I have that with me.

I don't have yours, Mr. Mina.

MR.MINA: Would you like a copy, your Honor?

THE COURT: Yes, I would, because obviously you are raising points which, had I had that over the weekend, I would have read it.

Bear with me, ladies and gentlemen.

(At the side bar)

MR. MINA: Your Honor, I think I know what

may have happened. The party, the attorney that delivered it from my firm told me that they would not let him come upstairs on Friday afternoon and they asked him, I believe, to deliver it to the sixth floor and they said they would get it to you because we did mention that you wanted it by Friday.

THE COURT: Yes, I did.

In any event, I have not seen the original as of this moment and obviously I am interested in the point which you raised.

Let me hear from Mr. McInerney on the subject.

MR. MC INERNEY: Yes, your Honor.

The act clearly says that if they do not proceed in the fashion I outlined in my opening statements, give specific written charges, afford the party involved to prepare a defense and also afford him a hearing, they may not expel him from the union, which I contend they did physically now -- that is No. 1 -- or otherwise discipline him.

Certainly, your Honor, to call in the police and have a man removed from his union hall, that in and of itself is a disciplinary thing. They didn't have any hearing within the hall, they didn't follow any membership.

And on the point we have to exhaust our union

remedies, it would be a futile gesture. There is no remedy. The dismissal of the charges in the criminal court, what could he do within the union? There was nothing for him to do and no place for him to go to. The thing had been resolved by the criminal court. It would have been a futile gesture. And the cases hold that a futile gesture -- it is not necessary to make a futile gesture.

MR. BERGADANO: Mr. McInerney's very statement, I think is dispositive of the first cause of action, because whatever was done to ask the police to intervene is a completely independent agency of government which makes up its own mind. They acted upon a complaint by Mr. Nimmo, who stated facts, namely, that this man had been requested to leave, that he was handing out literature, that he refused to leave, that he had been requested a number of times and the police then arrested him.

The prosecution of the criminal charges and, indeed, the criminal charges which were specified by either or both the New York City Police Department or the District Attorney of the County of New York. They were not specified by any of the defendants, they were not prosecuted, obviously, by any of the defendants.

Prosecution, as your Honor knows, of criminal charges are in the hands of the duly elected or appointed officials for that purpose, in this case the District Attorney of the County of New York.

There was no violation, certainly, by my clients of any of his union rights. He was not expelled from the union, he was not disciplined by the union, he was not fined by the union, the union did nothing whatsoever as to his rights and certainly my clients as counsel to the union had nothing to do with "disciplinary action" in the sense that this man was arrested by the New York City Police Department for refusing to leave after being told to leave and asked to leave repeatedly on that day.

So as far as Landrum-Griffin, I don't think the arrest by an outside duly appointed police official and prosecution by a duly elected district attorney whose function it is to prosecute or not prosecute on his own judgment, since your Honor knows that prosecution is entirely in the hands of the district attorney, if he elects not to prosecute the charge, a private citizen cannot prosecuted it in place of the district attorney, so there is no violation by any of the defendants, and particularly my clients, of any of his union rights through what happened on July 1st and subsequent criminal prosecution

by the District Attorney of New York County.

MR. MINA: Your Honor, may I be heard --

MR. MC INERNEY: May I answer that first? That assumes quite a bit, your Honor.

First of all, the testimony at the deposition was that the police officer said, "I was merely an escort," the complaint, in fact, was made by Mr. Nimmo.

Further than that, there is a question whether there was full disclosure of what these defendants knew about the situation.

If the district attorney had had the information that these defendants had, he would never have gone ahead with the prosecution and he so testified at his deposition, your Honor.

MR. MINA: Your Honor, I would respectfully submit that what Mr. McInerney is now talking about is totally irrelevant to the motion that is being made.

What we are talking about is whether or not the arrest of the plaintiff falls under the terms of the Landrum-Griffin Act.

The Landrum-Griffin was an act to give a union member a right to a remedy where he had no civil remedy. In this case he had the civil remedy. An arrest has never been considered a union sanction.

We have done exhaustive case law study and the purpose of the Landrum-Griffin is only to be used where there has been a union sanction, such as taking a union vote, such as refusing to take dues, not allowing your rights.

This is not the case. There was a civil remedy.

Again, we must reiterate if the plaintiff does take the position that he does come under Landrum-Griffin, which we certainly oppose, then administrative remedies have to be used and exhausted before he can bring a civil action.

MR. BERGADANO: I may add to that, your Honor, that our research also discloses that there is absolutely no case insofar as an arrest of a union member is concerned. Every single case had to do with union action, either expelling a member, depriving him of his union rights by the union in the course of normal union activities.

There is also not a single case, there is nothing on the legislative history that would include counsel for the union as parties to a Landrum-Griffin Act, particularly under these circumstances.

MR. MC INERNEY: That is not so, because

we got a judgment against Mr. Freedman in the last action I had with Mr. Morrissey and it was a Section 501 case and he was held to be a party within the Landrum-Griffin Act and, consequently, he was an agent of the union.

MR. BERGADANO: That is not correct and you know it.

MR. MC INERNEY: We got a judgment for $300,000.

MR. BERGADANO: You got a judgment on totally different grounds, it had nothing to do with the Landrum-Griffin Act.

THE COURT: I am interested in what you gentlemen have said. Obviously you raise a legal point which must be pursued.

I am also concerned about the fact that the plaintiff has pending a state court action for malicious prosecution which appears to parallel this one.

MR. MC INERNEY: Your Honor, may I be heard on that?

THE COURT: I think the time has come for him to elect if he wishes to proceed here and to give you a dismissal of the state court action, he then takes the risk in that he may lose the pendent jurisdiction of

this court, but that is his risk.

MR. MC INERNEY: I will give them a dismissal on the record, your Honor, but I ask that that dismissal be without prejudice, because the statute of limitations has run otherwise.

MR. BERGADANO: That is immaterial, your Honor. He has the second and third causes of action. I have my file if your Honor wishes to see it.

THE COURT: It has not been adjudicated, counsel, you see. I am concerned about his election that he can't have a second bite at the appeal.

MR. BERGADANO: Exactly.

MR. MC INERNEY: I will be pleased to do that. If we get an adjudication here, I have no idea of going back.

THE COURT: Are you prepared now that you have been embarked on this trial to dismiss the other case?

MR. MC INERNEY: I am, your Honor.

MR. BERGADANO: If your Honor wishes to have the pleadings in that case and the index number because they are slightly different --

THE COURT: He says he is prepared to dismiss the other case.

MR. BERGADANO: Fine.

THE COURT: There is a question of being dismissed with or without prejudice.

MR. MINA: I would respectfully request that it be with prejudice.

THE COURT: It is not an adjudication on the merits, but I certainly think if he has elected to proceed here he should be foreclosed from proceeding there, and I think any other disposition would be empty in nature.

MR. BERGADANO: Yes, your Honor.

THE COURT: Therefore, I would only consider a dismissal of his state court proceedings with prejudice, but the stipulation is that there was no adjudication on the merits over there so that there is no res judicata or collateral estoppel effect of the dismissal.

Is that agreed?

MR. MINA: Yes.

MR. BERGADANO: Yes, but it is a dismissal or discontinuance in the state court of that action with prejudice by the plaintiff, which we will stipulate does not concede collateral estoppel or res judicata in this case before your Honor so your Honor can decide this case on the merits insofar as the law is

concerned.

THE COURT: Are you agreeable to that?

MR. MC INERNEY: Yes, your Honor.

I might say I haven't taken a single deposition or taken a single step in that action.

I came in -- I won't go into the details.

MR. BERGADANO: Your Honor, if I may have a moment, I have my file on that case. I would like to identify that case by its proper title.

THE COURT: Yes, I think you should.

MR. BERGADANO: For the record, your Honor, the action that we are discussing in the Supreme Court of the State of New York in the County of New York is entitled James M. Morrissey, plaintiff, against, Joseph Curran, Shannon J. Wall, Charles Snow, Abraham E. Freedman and Charles Sovel, bearing that court's index number 1584/1971.

If your Honor will note, the union was not made a party to that action, it is only against the individual named defendants.

THE COURT: Very well.

MR. BERGADANO: But my clients were named defendants in that action as well.

That action, your Honor, on the complaint

cause of action based under the Landrum-Griffin Act on the grounds that the arrest of the plaintiff is not now, has never been, a ground for Landrum-Griffin violations.

There has been no allegation made by the plaintiff on his opening that he will prove nor has there ever been an allegation of it to be the case, that the plaintiff lost any of his rights insofar as his union membership was concerned, and that is the only thing that Landrum-Griffin deals with.

THE COURT: Didn't you make a motion before another judge to dismiss the complaint in this case that was denied?

MR. MINA: No, your Honor.

THE COURT: I thought I saw a Rule 12 motion in this rather voluminous file.

MR. MINA: No, your Honor.

MR. BERGADANO: If it was, it was mine, but on other grounds, your Honor, not on the ones we are asserting now, and I am joining in this motion and particularly, your Honor, since there are absolutly no cases, nor in the legislative history in the Landrum-Griffin Act anything about counsel in the unions and arrests; the entire development of the Act had to do with abuse of members and their membership of their

union,and the officials of the union, and corrupt unions, as your Honor may recall the hearings, and the statute itself makes no mention whatsoever,nor did any of the legislative history have anything to do with counsel for the union, and acting in the capacity as counsel.

So that I have that additional ground insofar as my clients, your Honor.

I have a further motion, your Honor.

This plaintiff commenced another action across the street in Supreme Court on the second and third causes of action, which action has been pending since June of 1972, simultaneously with this action in which they have not prosecuted actively since they apparently chose to come this course, but that action has been pending and that action, insofar as my client Mr. Freedman is concerned, was commenced prior to this action and as to Mr. Sovel, I'm not sure of the date but they are very close, so on the second and third causes of action insofar as my clients are concerned, I raise that.

MR. MINA: Additionally, as a ground to dismiss thefirst cause of action, I also respectfully refer the Court to our trial memoranda and point out if it is the plaintiff's contention that he does come under the Landrum-Griffin Act, then he is required by the

terms of that Act to have tried remedies within the union, administrative remedies, before ever coming to this courthouse and that was never done.

MR. BERGADANO: I join in that, too, your Honor. He has not alleged that he ever tried any of the administrative remedies which might be available to him or that this violated any of his administrative remedies which he otherwise had, which is one of the things so specified in the Act.

THE COURT: Mr. Mina, do you have a trial memorandum?

MR.MINA: Yes, your Honor. We brought it in Friday.

MR. BERGADANO: That is mine, your Honor.

THE COURT: Yes. I have yours.I have that with me.

I don't have yours, Mr. Mina.

MR.MINA: Would you like a copy, your Honor?

THE COURT: Yes, I would, because obviously you are raising points which, had I had that over the weekend, I would have read it.

Bear with me, ladies and gentlemen.

(At the side bar)

MR. MINA: Your Honor, I think I know what

may have happened. The party, the attorney that delivered it from my firm told me that they would not let him come upstairs on Friday afternoon and they asked him, I believe, to deliver it to the sixth floor and they said they would get it to you because we did mention that you wanted it by Friday.

THE COURT: Yes, I did.

In any event, I have not seen the original as of this moment and obviously I am interested in the point which you raised.

Let me hear from Mr. McInerney on the subject.

MR. MC INERNEY: Yes, your Honor.

The act clearly says that if they do not proceed in the fashion I outlined in my opening statements, give specific written charges, afford the party involved to prepare a defense and also afford him a hearing, they may not expel him from the union, which I contend they did physically now -- that is No. 1 -- or otherwise discipline him.

Certainly, your Honor, to call in the police and have a man removed from his union hall, that in and of itself is a disciplinary thing. They didn't have any hearing within the hall, they didn't follow any membership.

And on the point we have to exhaust our union

remedies, it would be a futile gesture. There is no remedy. The dismissal of the charges in the criminal court, what could he do within the union? There was nothing for him to do and no place for him to go to. The thing had been resolved by the criminal court. It would have been a futile gesture. And the cases hold that a futile gesture -- it is not necessary to make a futile gesture.

MR. BERGADANO. Mr. McInerney's very statement, I think is dispositive of the first cause of action, because whatever was done to ask the police to intervene is a completely independent agency of government which makes up its own mind. They acted upon a complaint by Mr. Nimmo, who stated facts, namely, that this man had been requested to leave, that he was handing out literature, that he refused to leave, that he had been requested a number of times and the police then arrested him.

The prosecution of the criminal charges and, indeed, the criminal charges which were specified by either or both the New York City Police Department or the District Attorney of the County of New York. They were not specified by any of the defendants, they were not prosecuted, obviously, by any of the defendants.

Prosecution, as your Honor knows, of criminal charges are in the hands of the duly elected or appointed officials for that purpose, in this case the District Attorney of the County of New York.

There was no violation, certainly, by my clients of any of his union rights. He was not expelled from the union, he was not disciplined by the union, he was not fined by the union, the union did nothing whatsoever as to his rights and certainly my clients as counsel to the union had nothing to do with "disciplinary action" in the sense that this man was arrested by the New York City Police Department for refusing to leave after being told to leave and asked to leave repeatedly on that day.

So as far as Landrum-Griffin, I don't think the arrest by an outside duly appointed police official and prosecution by a duly elected district attorney whose function it is to prosecute or not prosecute on his own judgment, since your Honor knows that prosecution is entirely in the hands of the district attorney, if he elects not to prosecute the charge, a private citizen cannot prosecuted it in place of the district attorney, so there is no violation by any of the defendants, and particularly my clients, of any of his union rights through what happened on July 1st and subsequent criminal prosecution

by the District Attorney of New York County.

MR. MINA: Your Honor, may I be heard --

MR. MC INERNEY: May I answer that first? That assumes quite a bit, your Honor.

First of all, the testimony at the deposition was that the police officer said, "I was merely an escort," the complaint, in fact, was made by Mr. Nimmo.

Further than that, there is a question whether there was full disclosure of what these defendants knew about the situation.

If the district attorney had had the information that these defendants had, he would never have gone ahead with the prosecution and he so testified at his deposition, your Honor.

MR. MINA: Your Honor, I would respectfully submit that what Mr. McInerney is now talking about is totally irrelevant to the motion that is being made.

What we are talking about is whether or not the arrest of the plaintiff falls under the terms of the Landrum-Griffin Act.

The Landrum-Griffin was an act to give a union member a right to a remedy where he had no civil remedy. In this case he had the civil remedy. An arrest has never been considered a union sanction.

We have done exhaustive case law study and the purpose of the Landrum-Griffin is only to be used where there has been a union sanction, such as taking a union vote, such as refusing to take dues, not allowing your rights.

This is not the case. There was a civil remedy.

Again, we must reiterate if the plaintiff does take the position that he does come under Landrum-Griffin, which we certainly oppose, then administrative remedies have to be used and exhausted before he can bring a civil action.

MR. BERGADANO: I may add to that, your Honor, that our research also discloses that there is absolutely no case insofar as an arrest of a union member is concerned. Every single case had to do with union action, either expelling a member depriving him of his union rights by the union in the course of normal union activities.

There is also not a single case, there is nothing on the legislative history that would include counsel for the union as parties to a Landrum-Griffin Act, particularly under these circumstances.

MR. MC INERNEY: That is not so, because

we got a judgment against Mr. Freedman in the last action I had with Mr. Morrissey and it was a Section 501 case and he was held to be a party within the Landrum-Griffin Act and, consequently, he was an agent of the union.

MR. BERGADANO: That is not correct and you know it.

MR. MC INERNEY: We got a judgment for $300,000.

MR. BERGADANO: You got a judgment on totally different grounds, it had nothing to do with the Landrum-Griffin Act.

THE COURT: I am interested in what you gentlemen have said. Obviously you raise a legal point which must be pursued.

I am also concerned about the fact that the plaintiff has pending a state court action for malicious prosecution which appears to parallel this one.

MR. MC INERNEY: Your Honor, may I be heard on that?

THE COURT: I think the time has come for him to elect if he wishes to proceed here and to give you a dismissal of the state court action, he then takes the risk in that he may lose the pendent jurisdiction of

this court, but that is his risk.

MR. MC INERNEY: I will give them a dismissal on the record, your Honor, but I ask that that dismissal be without prejudice, because the statute of limitations has run otherwise.

MR. BERGADANO: That is immaterial, your Honor. He has the second and third causes of action. I have my file if your Honor wishes to see it.

THE COURT: It has not been adjudicated, counsel, you see. I am concerned about his election that he can't have a second bite at the appeal.

MR. BERGADANO: Exactly.

MR. MC INERNEY: I will be pleased to do that. If we get an adjudication here, I have no idea of going back.

THE COURT: Are you prepared now that you have been embarked on this trial to dismiss the other case?

MR. MC INERNEY: I am, your Honor.

MR. BERGADANO: If your Honor wishes to have the pleadings in that case and the index number because they are slightly different --

THE COURT: He says he is prepared to dismiss the other case.

MR. BERGADANO: Fine.

THE COURT: There is a question of being dismissed with or without prejudice.

MR. MINA: I would respectfully request that it be with prejudice.

THE COURT: It is not an adjudication on the merits, but I certainly think if he has elected to proceed here he should be foreclosed from proceeding there, and I think any other disposition would be empty in nature.

MR. BERGADANO: Yes, your Honor.

THE COURT: Therefore, I would only consider a dismissal of his state court proceedings with prejudice, but the stipulation is that there was no adjudication on the merits over there so that there is no res judicata or collateral estoppel effect of the dismissal.

Is that agreed?

MR. MINA: Yes.

MR. BERGADANO: Yes, but it is a dismissal or discontinuance in the state court of that action with prejudice by the plaintiff, which we will stipulate does not concede collateral estoppel or res judicata in this case before your Honor so your Honor can decide this case on the merits insofar as the law is

concerned.

THE COURT: Are you agreeable to that?

MR. MC INERNEY: Yes, your Honor.

I might say I haven't taken a single deposition or taken a single step in that action.

I came in -- I won't go into the details.

MR. BERGADANO: Your Honor, if I may have a moment, I have my file on that case. I would like to identify that case by its proper title.

THE COURT: Yes, I think you should.

MR. BERGADANO: For the record, your Honor, the action that we are discussing in the Supreme Court of the State of New York in the County of New York is entitled James M. Morrissey, plaintiff, against, Joseph Curran, Shannon J. Wall, Charles Snow, Abraham E. Freedman and Charles Sovel, bearing that court's index number 1584/1971.

If your Honor will note, the union was not made a party to that action, it is only against the individual named defendants.

THE COURT: Very well.

MR. BERGADANO: But my clients were named defendants in that action as well.

That action, your Honor, on the complaint

encompasses what are here alleged as the second and third causes of action, the malicious prosecution and the claim for exemplary and punitive damages and, indeed, your Honor, they are identical.

MR. MC INERNEY: Over there they were for a lesser amount.

MR. BERGADANO: But the causes of action are identical stemming from the same identical facts.

THE COURT: Here is what I propose to do, gentlemen:

I think that counsel should stipulate to dismiss the state court proceeding with prejudice and without costs.

MR. BERGADANO: Yes, sir.

THE COURT: Relative to the application which you have made to dismiss on counsel's opening, I will deny that without prejudice to the application being made at the end of the plaintiff's case, but the point that I would make with you gentlemen now is this:

If he dismisses his state court action, I would consider that I have sufficient pendent jurisdiction under Gibbs against the United States Mineworkers to enable me, if he makes out a prima facie case on malicious prosecution against any or all of the defendants, to

submit that case to this jury under the doctrine of pendent jurisdiction.

To me it would be grossly unfair to dismiss his state court action and then to dismiss over here if he doesn't make out his Landrum-Griffin causes of action on the ground that his malicious prosecution suit is not a matter within the jurisdiction of this court because, for example, there is no absolute diversity or something of that nature.

I am prepared to see his state court case terminated at this time and I am inclined to believe that we should proceed here with the court indicating that in any event, whether I agree with you ultimately or disagree with you on your Landrum-Griffin claims, and I am inclined at this point to look favorably on your application, but I am not here to dispose of it on the merits at this point, but I would not want to put him in a position where he would be out on his malicious prosecution case.

I think he is entitled to a day in court against all of the defendants and I should think this is his day and this is his court.

If anyone disagrees with me on that, let him say so now.

MR. BERGADANO: Your Honor, I don't disagree with the substance, I think there should be a correction, though.

Your Honor does not have the power to dismiss the state court action, what we have here is a voluntary discontinuance of that action by the plaintiff on this record with prejudice and without costs or disbursements as to any party against any othe

On that dismissal the plaintiff is acting on his own through his counsel with full knowledge of the facts.

THE COURT: That would have to be a dismissal between counsel. Certainly I could not direct it, I would not direct it, I would not or could not so order it.

MR. BERGADANO: Of course.

THE COURT: But I also want you gentlemen to understand that I don't want him placed in a bind.

MR. MC INERNEY: I have agreed on the record in open court and I think you, Mr. Mina, is the only one that hasn't spoken on it.

MR. MINA: I have accepted it.

MR. BERGADANO: It is stipulated by all counsel.

THE COURT: All right.

(In open court)

THE COURT: We will now hear the opening statements from counsel for the defendants.

Mr. Mina.

MR. MINA: Ladies and gentlemen of the jury, again, my name is Frank Mina. I represent the National Maritime Union, Joseph Curran, Shannon Wall, James Nimmo and Charles Govel.

Now, what we will show you during the course of this trial is that this is a perfect example of the old cliche of making a federal case out of something.

We are going to show you that the National Maritime Union, which I don't think we have to do too much talking about, is a union made up of seamen; not of doctors, not of engineers, it is made up of seamen, people who come into a port, who go to their union hiring hall. These are not the type of people who would hesitate to get into a brawl over something. We are talking about seamen. And this happens to be a important factor to keep in mind.

We will show you that what happened on more than one occasion, much more than one occasion, and did happen, was that the seamen would come in, that people

would pass out opposition literature -- and when we say opposition, at the time that this occurred, July 1st, 1971, the administration was run by the president, Joseph Curran, who is a defendant; Shannon Wall was the secretary, he's a defendant; and they were then the administration of the National Maritime Union.

Mr. Morrissey then and, as mentioned, for quite some time before was part of the opposition. If Mr. Morrissey had been in the administration, then Mr. Curran and Mr. Wall would have been the opposition.

Mr. Morrissey was the opposition and we do not question that at all. He is what the administration considered a dissident. He had a different group that wanted different things done.

The point to keep in mind is that what we will show is that this case is for malicious prosecution that occurred on July 1, 1971. This is not a case relating to what happened in 1965, in 1960; it is for malicious prosecution on that date.

And what happened on that date was that Mr. Snow and Mr. Nimmo, who were in charge of the security in the building, told Mr. Morrissey to stop distributing his leaflets in the union hall in the building. There were notices posted there, and there had been for some time,

that said no distribution of literature, other than The Pilot -- The Pilot is the official publication for the union -- in the union hall.

We will show you that prior to this incident Mr. Morrissey had on other occasions, many other occasions, distributed his listerature where he was supposed to, which was right outside the union hall and up to the corner of Seventh Avenue, where everybody else gave it out.

We will show you that what was done to Mr. Morrissey on July 1, 1971 was not something that Mr. Morrissey was picked out for. No one was allowed to distribute, other than in designated areas.

The poster, the notice on the inside of the hall told him that.

We will show you, and we have taken what we call pre-trial depositions, we will show you that Mr. Morrissey has admitted at the pre-trial depositions that he knew the notice was up, he knew it said he was not supposed to be distributing in there.

They tell you that Mr. Morrissey was arrested. What happened, and we will show you this -- let me make a point on two things.

When I say we will show you this, we do it by witnesses and we do it by means of reading depositions

or putting something into evidence.

In this case and, if necessary, we shall give you the proof of this, Mr. Curran will not be in to testify. Mr. Curran will not be in to testify because --

MR. MC INERNEY: Your Honor, I move to preclude any statements about whether Mr. Curran is going to be here or not, but there shouldn't be any explanation on the record to this jury. If he is going to be here let him be here.

THE COURT: Let me just suggest this:

If Mr. Curran is not here, I am sure it will be for a good and sufficient reason. You shouldn't presume anything against him because he is not here. You should take whatever is presented from him in the form of testimony just the same as if he were here.

MR. MINA: In that regard, we have a Mr. Snow, whose deposition will probably be read to you. Again, we shall give you evidence as to why his deposition is bein- read to you.

Mr. Nimmo will be here to testify. Mr. Wall, if necessary, will be here to testify.

Now, let me make a point.

When I say these people will be here, that is only if we feel we have to give you some evidence.

You understand, and the Judge will tell you, the plaintiff has the burden of proof. We don't have to prove anything, that is up to the plaintiff. So if we feel, after the plaintiff's case, that it is necessary for us to bring these people in, we will.

But what that evidence will show you happened is that on prior occasions Mr. Morrissey had come into the building with his leaflets to hand out the pamphlets and he was asked to please go outside and give them out where you are supposed to, out in front of the hall under the eaves or up to the corner. But that was designated area for everyone. And on those prior occasions Mr. Morrissey went out and gave them out there.

We will show you from his deposition that he admitted that almost all the time that he gave these out he did it outside where he was supposed to.

However, on July 1, 1971 -- on July the 1st, 1971, Mr. Nimmo asked Mr. Morrissey to please go outside with the pamphlets and Mr. Morrissey refused.

Mr. Morrissey said that he wasgoing to hand them out in the building because he contended he had a right to. He admits he knew about the notice. We will show you that. He knew the notice was there, and we submit to you that what happened on July 1st, 1971 is that

Mr. Morrissey forced himself into an arrest to test the validity of the notice.

Your Honor, may I respectfully request that Mr. McInerney stop chuckling and shaking his head behind me?

THE COURT: I didn't observe he was doing that. I should think he knows not to do it. I assume that he didn't do it and I will leave the matter at that.

MR. MINA: Thank you, your Honor.

What we will show you happened is that Mr. Nimmo talked to Mr. Snow and told him that Mr. Morrissey refused to leave the hall. They kept asking him and he continued to refuse to leave the hall.

At that point they did something that no union member in the National Maritime Union wouldn't be ashamed of them for. They called the police. That's not the way seamen like to do things. But because of the fact that they weren't going to throw him out of the building, and they had a notice, they called the Charles Street Precinct and the police came down.

You will see that they again asked him to leave the building and told him, "If you don't leave the building, we are having you arrested."

He refused to leave the building; they had him arrested.

Now, let me tell you about the arrest.

What happened to Mr. Morrissey was that he was taken to the Charles Street Precinct, and we will show you this, was given what is called a Vera summons, something like a parking ticket, was given this and told to come back for his trial in a couple of weeks.

We will show you from the police officer's own testimony, and we have taken it, that Mr. Morrissey spent a total sum of approximately 30 to 45 minutes in the police precinct.

He then came back on two occasions because there were two charges. The first one was dropped the first time, the second one was dropped the second time.

We will show you about that, that the reason that they were dropped is because it was held by the Judge that the union had never officially adopted the no literature rule in the hall. As a result of the dismissal of that action, at the next port meeting of the NMU the rule was adopted by all the ports in the country.

MR. MC INERNEY: Your Honor, I don't know what happened after the fact is proper to be telling the jury about.

THE COURT: I am not sure that it is, either, and under the circumstances we will await the proof on that. The jury has heard it and we will let it stand, just as he heard you.

It just must understand that this is supposed to be an outline of the proof which counsel intend to offer. I have some reservations about the admissibility of evidence about what happened after the fact, but I am going to leave that for you now.

Go ahead, counsel.

MR. MINA: Thank you, your Honor.

What we will show you, and this is the simple point in the case, that Mr. Morrissey was not arrested out of any malice. Mr. Morrissey was arrested because he failed to comply with what the people in the union and the people who were in charge of security believed to be the rule. They had a notice posted that way and we submit to you that the only reason the case was dismissed was because there had never been a formal adoption of the resolution.

We will show you that every seaman that came into that building knew that literature could not be distributed in there. It was the rule. And we say that the arrest was reasonable and that's what we were

concerned about. It was not done to get even with Jim Morrissey.

And let me tell you something so that there is no surprises on trial. We are not telling you that the administration and Jim Morrissey had any love between them. Mr. Morrissey has been the opposition for quite some time. But that's not what this case is about.

What this case is about is why are we here now. We submit we will show you that Mr. Morrissey knew that by walking out of the building that would have been the end of it and distributing his literature. Instead, he forced the security people into calling the police in to have him arrested because of his refusal to leave the building.

Now, at this point I have talked to you, I have told you what we intend to show you. After doing all of that, it may sound funny, but now I say forget what I say, that is not testimony, that is the outline. What you hear from the stand is testimony.

What I would ask you to do at this point is to listen to that testimony and then at the end of the case we will get a chance to talk to you about what you have actually heard as opposed to trying to tell you now what you might hear.

Thank you.

THE COURT: Thank you, Mr. Mina.

Mr. Bergadano.

MR. BERGADANO: Thank you, your Honor.

Good afternoon.

As you know, I represent Abraham Freedman and Charles Sovel, who are lawyers for the union.

You heard Mr. McInerney say to you what they intend to prove as to all the defendants.

Well, I want you to listen carefully and I want you to listen carefully and I want you to pay attention, particularly keeping in mind for my part my clients, Mr. Sovel and Mr. Freedman. Mr. Freedman is not here.

The facts will show on the day of the arrest he was not there, either, the simple reason, as we will show, is that Mr. Freedman's main office and his home are in Philadelphia.

The facts will show nobody discussed this arrest with Abe Freedman before it took place, nobody called him, he didn't advise anybody no one consulted him.

The facts will also show that nobody consulted Mr. Sovel, nobody asked his advice, he never told them

to arrest anybody and that neither Abe Freedman or Chuck Sovel had anything whatsoever to do with that arrest out of which this whole big case arrives.

I won't speculate now with you, I won't discuss with you what I think is the reason for bringing my clients into this case. That may be for summations, if and when we get to that stage.

What I do ask of you is to listen to the evidence very, very carefully, keeping in mind my two clients, two of the lawyers for the union, and then when the time comes to deliberate to consider what, if anything, they had to do with Mr. Morrissey being arrested on that date. Whether he was arrested because he pushed his arrest or not, that, of course, will be for you to determine. But I want you to keep in mind my clients, two lawyers, whom we will show were not consulted, didn't tell anybody that he should be arrested, had nothing to do with the arrest.

That is all I will say at this time.

Thank you.

THE COURT: Thank you, Mr. Bergadano.

I think this would be a good time for us to take our luncheon recess. It is going on a quarter of 1:00. The latest I will sit in 1:00 o'clock.

I am sure you ladies and gentlemen got up pretty early to get down here to begin your jury service.

We will take a recess now and resume in one hour at a quarter of 2:00.

Please do not discuss the case among yourselves, don't remain with the presence of anyone else as you come and go from the courthouse and courtroom who may be discussing the case and you just heard the opening statements and they are not evidence so keep an open mind on all facets of the case until it has been concluded.

The jury is excused and directed to return at a quarter of 2:00.

Counsel are excused and directed to return at the same time.

(Luncheon recess)

nd t
llowed
MH

AFTERNOON SESSION

1:45 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen. Would you call your first witness, please, Mr. McInerney?

MR. McINERNEY: The plaintiff calls James Morrissey to the witness stand.

J A M E S M. M O R R I S S E Y, the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McINERNEY:

Q Are you the plaintiff in this action?

A Yes, I am.

Q Have you ever been convicted of a crime?

A Yes, I have.

Q Can you tell us the facts and circumstances concerning that conviction?

A In 1938 I was twenty-one years old, I was convicted of a crime of robbery with violence. I was sentenced to the Connecticut State Reformatory for a period of two to five years.

After eighteen months I was put on parole. After

serving the parole, why, I left my home town and went to sea. That was the reason I was going to sea, actually.

Q And when did you begin your affiliation with the National Maritime Union?

A Well, my affiliation with the NMU goes back to 1941.

At that time I sailed as a probationary member, and after fulfilling a minimum six-month sea-time requirement for membership, I applied for a book and received a book in February of 1942.

Q What happened after that?

A Well, for my first eight years as a member of the union, I sailed as another rank-and-file member, and it wasn't until 1949 that I became involved with the officials of the union.

At that time I just had gotten off the SS America. I came ashore and I walked right into the middle of a palace revolution.

THE COURT: Let's not be quite so dramatic, Mr. Morrissey.

If you want to tell us what happened, fine. I don't think there was any palace and I'm not sure there was any revolution.

If you want to tell us what happened, tell us

what happened, using language which the Court and the jury can understand.

THE WITNESS: I'm sorry, sir. I didn't mean to be. What I meant by that is this:

A The union administration was split right down the middle at that time. There were two factions. There was a communist group and an anti-communist group. There was great division within the union.

MR. MINA: Your Honor, at this time I would respectfully object on the grounds that this has absolutely no relevance to the lawsuit.

THE COURT: Do you move to strike?

MR. MINA: Yes, your Honor.

THE COURT: Granted. Strike it.

The jury will disregard the answer of the witness to this question up to this point.

Let's start over again.

Mr. Reporter, would you read the pending question to the witness?

Mr. Witness, please try to answer to the question to the best of your ability.

MR. McINERNEY: Your Honor, may I approach the bench on this, please?

THE COURT: No.

(Record read)

A I sailed as a rank-and-file member up until 1948, and in 1948, I was -- that was the first time I became involved with the officials of the union.

I came ashore off the SS United States, and I got involved in a political -- I don't know how to phrase this. It's uusally termed what I described it as before in unions, when the administration of unions --

Q Let me interrupt you, Mr. Morrissey.

Did there come a time when you became affiliated with Joseph Curran?

A Yes.

Q And Joseph Curran's side of the slate?

A Yes.

THE COURT: I gather there were two sides at that point. There were the pro-Curran people and the anti-Curran people; is that right?

THE WITNESS: Yes, your HOnor.

THE COURT: And at that time, speaking of 1948-1949, you joined the pro-Curran side; is that correct?

THE WITNESS: Yes, that is true.

Q And who was on the opposition at that time?

MR. MINA: Objection, your Honor.

THE COURT: Overruled.

Q Who was in opposition to Curran at that time?

A There was this communist group. As a matter of fact, Mr. Curran --

THE COURT: All right, that was the group.

Q And you joined forces with Mr. Curran; is that right?

A Yes.

Q And what happened after that was over?

A Well, I was very active in my support of Mr. Curran. As I said, there was great turmoil in the union. That went on for several weeks. There was litigation involved.

But, in any event, ultimately the anti-communist group prevailed. We regained control of the union and, as a result of that, I was appointed by Mr. Curran as a patrolman.

A patrolman is comparable to a business agent on a shoreside union.

I was appointed until the following elections, which was in 1950.

THE COURT: Let's go back one step.

When were you appointed?

THE WITNESS: I was appointed in -- it was in '49, your Honor. I'm not sure exactly when.

THE COURT: That is all right.

You were appointed a patrolman in 1949 and you served until the following election in 1950?

THE WITNESS: Yes.

THE COURT: Then what happened?

THE WITNESS: In 1950 I ran on the anti-communist slate headed by Mr. Curran and again in 1952, I ran on that same slate, and was re-elected.

THE COURT: You were elected in 1950 and again in 1952?

THE WITNESS: Yes.

THE COURT: As a patrolman?

THE WITNESS: As a patrolman.

THE COURT: In what port?

Q What is a patrolman?

A It is comparable to a business agent in the shoreside union.

THE COURT: In what port?

THE WITNESS: In the Port of New York.

A During that four and a half years in office, I became quite familiar with the operation of the union here in the port, the headquarters port. I had performed a number of different assignments.

I had been assistant port agent. I had relieved

him while he was on vacation or ill. I was what we call his buffer. What I mean by that is beefs that couldn't be settled on the ship level would come into the port and I'd process the beef and possibly settle it before he became bothered with it.

Q What is a "beef," Mr. Morrissey?

A Well, it's a dispute. It is a dispute with a ship owner about the -- usually about the contract.

I was also a hospital delegate. I was a member of the permanent disputes body as an alternate for Andrian Duffy, who was vice-president in charge of contract enforcement.

I many times had to go down, meet with the ship owners as part of this group and resolve problems that arose in the contract.

I was patrolman dispatcher, dispatcher.

Well, there were a number of jobs that made me quite familiar with what was happening within and without the union and around the union.

THE COURT: This took you from 1949 up to about 1954; is that correct?

THE WITNESS: Yes.

A In 1954, for personal reasons, I resigned.

In 1958 I ran in the '58 election for patrolman

in the Port of New York against the Curran slate and I beat the Curran slate in that election in the Port of New York. However, in the out ports I wasn't know. I lost the election.

My next encounter with the officials of NMU occurred in 1965. At that time, I recall, I had been on the beach quite awhile --

THE COURT: "On the beach" means you hadn't shipped out, been on ship?

THE WITNESS: Right, sir.

A I was on the beach for quite awhile. I registered and I made a couple of relief trips as a master-at-arms on the SS United States and I learned that one of the master-at-arms on that ship was going to retire. It was one of the best jobs you could get out of the union hall, really, for an unlicensed man.

So what I did was, while registered as an A/B, having had a master-at-arms discharge from the "big U," as we called her, from the America and other ships, I froze my card into a master-at-arms job, which means after the 90 days shipping period had expired, after that point, I would have to either reregister or freeze my card.

I froze my card at a master-of-arms job, which meant that was the only job I could compete in out of the

hall.

Knowing this man was going to retire and go back -- he was a Scandinavian; he was going back to Denmark -- I waited for this job, and the job finally came into the hall and I qualified for it, competed for it, won the job through competition and was accepted by the company, went down and signed on. We made a round trip and when I came back to the port to pay off, I went to sign on and I was told by the purser, he says, "Morris, I don't know what it is all about, but you can't make the next trip until you clear with the union. There is a stopper here to sign on."

MR. MINA: Your Honor, I hate to really interrupt the examination, but this has absolutely no relevance to the lawsuit before the Court.

THE COURT: Well, it is background.

I am going to instruct the jury that this testimony now is being presented as background to give you an idea who Mr. Morrisey is and what he has done before.

He just testified relative to a conversation that he had with some employee of the United States Lines. You are to disregard the words that were spoken between them. That is not evidence here.

If I can just tell you what is evidence at this

point, Mr. Morrissey, who was an able bodied seaman -- that is what he meant when he said "A/B" -- served briefly as master-at-arms, which is a position aboard a ship known as the SS United States, which he called the "big U."

He made one round trip on the ship as master-at-arms and then after that round trip he apparently was not signed on again in that position.

That is about where we are now.

Why don't you continue, Mr. McInerney?

Q Am I correct that you were told --

MR. McINERNEY: I withdraw that.

Q In any event, you were removed from the ship; is that right?

A Well, at this point I looked up the boarding patrolman who covered the ship, and I aksed him what this was all about.

He said, "Frankly, I don't know."

MR. MINA: Objection.

THE COURT: Well, the man said he didn't know.

Mr. Morrissey, unless your conversation was with one of the parties in this lawsuit or one of the parties to the lawsuit was present at the conversation, I am precluded, over objection, from permitting you to

testify as to conversations you may have had with third parties.

Those are the rules under which we function here, the rules of evidence.

In any event, you indicated that you had a conversation with a union official and, as I heard your testimony, and I will let this stand, you asked him how come you couldn't make another trip and continue as a master-at-arms aboard the United States, and in essence he indicated he did not know why not.

Is that right?

THE WITNESS: Yes, yes.

A And he told me to see the agent, the port agent, the union port agent.

THE COURT: And did you thereafter see the gentleman in question?

THE WITNESS: Yes. I saw the port agent.

THE COURT: Who was that?

THE WITNESS: Joseph Labaczewski.

THE COURT: Now your counsel will continue the inquiry.

Q In any event. to try to shorten this, Mr. Morrissey, did you at some time take this up with the national office?

A Yes.

Q Tell us about that.

A Well, the port agent, before I got to the national office, the port agent told me, he gave me some kind of a thing that didn't make any sense to me. He just said there was someone on the ship who had been promised that job, he was supposed to have been promoted into it.

MR. MINA: Objection, your Honor.

THE COURT: I am going to have to sustain it.

MR. MINA: I move to strike.

THE COURT: Strike it.

The jury will disregard it.

Whatever the reason, you pursued this matter, as I understand it, beyond the port agent to some national officer?

THE WITNESS: Right.

THE COURT: Your counsel had asked you who that was. Perhaps if you backtrack just a moment, tell us if there came a time when you saw one of the national officers, tell us when it was and who you saw.

THE WITNESS: Yes.

A I attempted to see every single national officer in the sixth floor, which is the headquarters floor, and they were all out.

I then discovered the next day that another man signed out of my place, the ship had sailed, and it wasn't until the following morning that I managed to talk with William Perry, who was the assistant to the president, and I managed to meet him down as he was going into the elevator off the shipping floor, and I asked Perry what it was all about.

I told him, rather, I complained to him what had happened. He said, "Yeah, yeah, I know all about it."

MR. MINA: Objection. Again, your Honor, we are talking about incidents that have nothing to do with this lawsuit, and hearsay.

MR. McINERNEY: Your Honor, the National Maritime Union is a party to the lawsuit, and these are officers here, and I can't see what the objection is founded on here.

MR. BERGADANO: Your Honor, I have to object. Mr.Morrissey himself said that Mr. Perry was the assistant to the president. I believe that is an appointive job, like in corporations and businesses. I don't know that that is -- and it hasn't been testified to -- that is an elected job and that he is an officer of the union.

THE COURT: In any event, following this conversation with Mr. Perry, did you pursue the matter further?

Did you see anybody else? If so, wh

THE WITNESS: No, I couldn't see him. He was the highest man in the union, outside of Mr. Curran, whether he was appointed or not.

THE COURT: After seeing him, you were not restored to your position as master-at-arms; is that right?

THE WITNESS: Well, he offered me --

THE COURT: No. Just answer that question.

THE WITNESS: No, I was not.

THE COURT: Very well.

MR. McINERNEY: Your Honor, I would like to make an offer of proof on this at the side bar.

THE COURT: You ask your question and I will hear your question.

MR. McINERNEY: All right.

Q What did Mr. Perry tell you?

MR. MINA: Objection.

THE COURT: Sustained.

MR. McINERNEY: Now may I make my offer of proof?

THE COURT: You may.

(At the side bar)

MR. McINERNEY: Your Honor, Mr. Morrissey has testified that Mr. Perry was the second highest man in the National Maritime Union.

The National Maritime Union is a party to this action and if Mr. Morrissey were permitted to answer this question he would say that Mr. Perry offered him the opportunity to be back door shipped, which is a violation of the shipping rules.

Mr. Morrissey declined it.

That is the offer of proof, your Honor.

MR. BERGADANO: Your Honor, Mr. Perry, as I understand it, was not there at the time, but, in any event, we have a conclusory statement that Mr. Perry is the second highest guy in the union. He is not an elected officer. Whether or not he had any functions or powers or duties, I don't think this witness is qualified. He hasn't offered --

THE COURT: What is the relevancy or materiality of a conversation which he had with Mr. Perry some four years before the events in question?

MR. BERGADANO: Because there was a lawsuit by this plaintiff where Mr. Perry was given -- your Honor, there was a lawsuit involving Mr. Perry, who was given substantial monies by the union under the officers' welfare and pension fund, which was determined in favor of the plaintiff, Mr. Morrissey being the plaintiff, where it was held that since he was not an officer of the union he should

not have received those monies and the people who paid him had to make restitution, including Mr. Curran, and I believe my client, and I think this is where we are headed.

That is completely irrelevant.

MR. McINERNEY: That is not where we are headed.

The purpose I am offering this for at this time is Mr. Morrissey was offered something that was reprehensible to him, an opportunity to cut out his brother seamen by back door shipping.

MR. MINA: Your Honor, can I request that this be a little lower?

MR. McINERNEY: I am sorry, your Honor. That is my natural tone.

That he was offered the opportunity to back door ship and when he was offered that opportunity, that is what motivated him in the first instance to run for national office. I think that is very germane in this particular lawsuit. That was his first opposition to Curran, his first real opposition on a national office level.

THE COURT: The objection is sustained.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Thank you.

MR. McINERNEY: Exception.

17 gtmch Morrissey-direct

(In open court)

Q Did there come a time when you ran for national office, for a national office in the National Maritime Union?

A Yes.

THE COURT: When?

THE WITNESS: In the 1969 election.

MR. McINERNEY: Your Honor, I want to take the witness back.

Q Did you run in the 1966 election?

A I'm sorry. The 1966 election.

THE COURT: That was the first time you ran for national office?

THE WITNESS: Yes, your Honor.

Q What office did you run for?

A Secretary-treasurer.

Q What was the result of that election?

A The results of the '66 election, I received 42 percent of the seamen's vote in that election. I was defeated. But there were so many violations of the election law in that election --

MR. MINA: Objection, your Honor.

MR. BERGADANO: Objection, your Honor. Not responsive to the question, your HOnor.

THE COURT: You received 42 percent of the vote and you were defeated at that time?

THE WITNESS: Yes, your Honor.

THE COURT: Very well.

Next question.

Q Did you complaint to the Department of Labor about the conduct of that election?

A Yes, I did, but only after exhausting my appeals within the union. I complained to the union first and asked them to do something about correcting these violations; they ignored it.

MR. MINA: Objection. I move to strike, your Honor.

THE COURT: I am going to let it stand. The jury has heard it.

You complained to the union and then after that to the Department of Labor; is that right?

THE WITNESS: Yes. I and four other candidates, yes, sir.

THE COURT: You were one?

THE WITNESS: Yes.

THE COURT: All right. Next question.

Q Did you announce to the membership that you were going to try to organize the 1966 convention?

MR. MINA: Objection; leading.

THE COURT: Sustained. You are leading.

Q What did you do next, Mr. Morrissey?

A Well, after exhausting my internal remedies within the union on the violations, I filed a complaint with the Secretary of Labor, I and four others. And in the meantime we had a convention coming up in October, and we felt that the delegates to that convention -- they came in from all over the country, all over the ports around the world -- should be informed of what happened during that election, what we proposed to do about it.

We also informed them as to what to expect during the convention and at that convention, based on a history of past conventions, NMU conventions, and we also told them that we would put out another issue of The Call --

Q Let me first interrupt you, Mr. Morrissey.

Did you put out the first issue of your Call for NUM Democracy at that time?

A Yes.

MR. McINERNEY: Mark that for identification, please.

(Plaintiff's Exhibit No. 1 was marked for identification.)

xxx

A We put that Call out --

Q Is that the first issue of your pamphlet, The Call?

A Yes, sir.

MR. BERGADANO: If your Honor please, would counsel kindly hold it down, because it has certain statements on the fact of it and since it is not in evidence, I think perhaps it might be a little inflammatory.

MR.MINA: I would join in that.

MR. McINERNEY: What statements --

THE COURT: Please, don't discuss the matters among yourselves. If you wish to address the Court, you may do so.

You have asked the witness to identify the document. What do you propose to do next?

MR. McINERNEY: I offer it in evidence, your Honor.

THE COURT: Show it to counsel, please.

MR. MINA: Objection, our Honor; absolutely no relevancy to this lawsuit.

MR. BERGADANO: I must join in that, your Honor.

THE COURT: Let me see the document.

(Pause)

THE COURT: Sustained.

Q What happened next, Mr. Morrissey?

A Well, in that issue of that Call, I promised the delegates --

MR. MINA: Your Honor, I am going to object.

THE COURT: In that issue of the paper you made certain statements; is that right?

THE WITNESS: Yes, your Honor.

THE COURT: What happened after that?

THE WITNESS: I don't know how I can explain it without making it -- explaining what the statement was I made.

MR. McINERNEY: Your Honor, I --

Q Mr. Morrissey, what happened on September 14, 1966?

A On September 14, 1966 --

MR. BERGADANO: Your Honor --

A -- as I left the union hall at lunch time --

MR. BERGADANO: Your Honor, I would like to object, because we believe we know what is coming and I think your Honor should hear this at the side bar, because we anticipate this testimony which we believe is totally irrelevant.

MR. MINA: And totally inflammatory.

THE COURT: I will hear counsel at the side bar.

(At the side bar)

MR. BERGADANO: Your Honor, that was the day upon which Mr. Morrissey was assaulted in the saloon by person or persons unknown, which he is trying to attribute to Mr. Curran and to the defendants in this case, and I doubt, sir, that it can be tied up. It never was and it can only be inflammatory and prejudicial.

THE COURT: This was some five years before the events in question?

MR. BERGADANO: Yes, your Honor.

MR. McINERNEY: Now, your Honor, may I be heard on that?

First of all, it was not a saloon, it was right outside the NMU hall.

MR. BERGADANO: Okay, I withdraw the saloon.

MR. McINERNEY: All right. You said it in the first place.

It was right outside the NMU hall he was assulated, your Honor.

Subsequently, in the NMU Pilot, there is a statement by one of the seamen, and this is edited by the national office, Morrissey got a little tap on the head, he probably fell off a bar stool.

Morrissey had multiple skull fractures and was

taken across the street to St. Vincent's Hospital and Curran knew it. He received the last rites twice and Curran knew it.

Now, if that is not malice, your Honor, to allow to be published in the National Maritime Union Pilot that he probably fell off a bar stool and he received a little tap on the head -- I will show you the article right now. We are going to offer it later. That is the proof of the malice.

MR. BERGADANO: There was nothing in the article or anyplace else that associated that assault on Mr. Morrissey with any of the defendants in this case, and more specifically,speaking for my own clients, no way did they tie it to them.

THE COURT: First, how do you tie in Mr. Friedman and Mr. Sovel with this?

MR. McINERNEY: Your Honor, on these people, that is a problem on this particular aspect of the malice.

THE COURT: It is very prejudicial to them, is it not?

MR. BERGADANO: Yes, sir.

MR. MINA: Your Honor, I would respectfully take the position on the record that this is very prejudicial to every defendant.

24 gtmch Mcrrissey-direct

THE COURT: Let us take it one step at a time, because unless he can get over the first hurdle, I don't see that we can do anything.

MR. McINERNEY: Your Honor, I don't know what we can do here, because it certainly is admissible on the others. I mean there is no two ways about it.

Further than that, your Honor, I am going to introduce a file that they kept on Morrissey within the union, showing all the things that happened, even to the extent that they dropped bags of water out of the union hall and the only thing that is missing --

THE COURT: Did Curran or Shannon Wall or any of these named plaintiffs do this, or any other people?

MR. McINERNEY: We do not claim it. We don't know who did it, your Honor. It happened outside the union hall, there was no burglary, there was no robbery. It was at a time the election was being conducted, and they put out in The Pilot that he probably fell off a bar stool.

If that is not malice -- I am not offering it as proof that they were the ones that did this. All I am offering it on is the issue of malice, that they knew this man was across the street in a hospital and they put that in the Pilot was certainly malice.

THE COURT: If you can testify that this was put in The Pilot at the direction of any of the defendants, I will hear you further.

You are assuming that it was because you say The Pilot is the house organ, the union newspaper.

MR. McINERNEY: And they are the national office, led by Curran, are the people who edit The Pilot.

And let me tell your Honor, and I'm sure your Honor knows, that there is nothing that goes in that Pilot that Mr. Curran doesn't want in.

MR. MINA: That is an excellent reputation, but there is no testimony to that effect.

THE COURT: I would have to have testimony to that effect.

MR. BERGADANO: If your Honor please, my clients are counsel to the union; they are not editors of The Pilot; they are not part of the national office; and my people would be grossly prejudiced by this kind of testimony where it tars with a broad brush anybody who has not been tied to anybody in particular.

There was no finding. There was apparently an investigation. Nobody was tied in to it.

I must object on behalf of my clients, who are lawyers and counsel to the union.

THE COURT: There is no instruction that I could give here that I can see, Mr. McInerney, which would fairly ameliorate this problem as it relates to Mr. Freedman and Mr. Sovel, and if you persist in making --

MR. McINERNEY: That is a problem, your Honor.

THE COURT: Indeed it is.

MR. McINERNEY: Certainly I want a record on it. I have to have a record on it because I recognize --

THE COURT: It would do you no good to get a judgment here with this type of inflammatory, infectious material. It wouldn't be worth the paper I signed it on.

MR. McINERNEY: Well, your Honor, there is a problem, because we have Mr. Curran's testimony about this Lucio article which appeared in The Pilot in his deposition. Certainly we are entitled to offer it against Mr. Curran.

But what does it mean when he says he probably fell off a bar stool? Even Mr. Bergadano said he was in a saloon. That is from the article he read, you see.

Your Honor, this is a very serious matter.

THE COURT: I don't deny that it is serious.

MR. BERGADANO: The problem is I just came from a saloon.

MR. McINERNEY: I'm sure of that, but Mr.

Morrissey doesn't go to them because he doesn't drink.

THE COURT: I would suggest at this point, having been published some five years before the event, and I'm sure you are going to come up with other material to show that there was an animus between --

MR. McINERNEY: We have plenty. We have plenty of it if it gets into evidence.

We are going to have the same problem with every one of these things with Freedman and Sovel.

THE COURT: Perhaps the parties can stipulate that the parties did not like each other.

MR. BERGADANO: I would not stipulate.

THE COURT: Take your clients out.

I could almost from the record in this courthouse say that that could be accepted as a matter of law vis-a-vis at least Mr. Curran and the plaintiff.

MR. BERGADANO: Your Honor could take judicial notice of it by virtue of the litigation.

MR. MINA: I have already indicated to the jury that these people do not like one another. I will so stipulate in this courtroom.

MR. McINERNEY: That is the same as stipulating to the doctor's qualifications. It means nothing without the details.

THE COURT: All right. That the parties hated each other; how about that, counsel?

MR. McINERNEY: No. I will go to this extent, your Honor, that the defendants hated the plaintiff.

MR. BERGADANO: It is a one-way street.

THE COURT: If you want to put in that parties disliked each other intensely, that is a fair statement.

MR. McINERNEY: No. I am going to prove my case.

THE COURT: Very well. Objection sustained.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Thank you, your Honor.

(In open court)

Q Mr. Morrissey, skipping down to January of 1967, will you tell us what happened in January of 1967?

A In January of 1967 -- yes. On or about that time, around the 1st of January, the U. S. Attorney in this court sued the union for a new election -- filed papers, I'm sorry, filed papers to sue the union for a new election, and I was at sea at the time. I remember getting a telegram at sea -- I was on the American Courier, a U. S. Lines freighter.

When I came into New York I went to the boarding patrolman to pay my dues and he told me he couldn't

accept my dues because I was over six months in arrears.

I said, "I know I am, but I went six months over in arrears at sea. The ship was at sea. I could hardly pay my dues out in the middle of the ocean."

He said, "Sorry, can't take them."

MR. MINA: Your Honor, I have to object to this.

Again, it is hearsay; again, it is totally irrelevant to this cause of action.

THE COURT: I am going to let it stand. It has gone in, the jury has heard it without your having objected up until now.

At least so far as the testimony has now been heard by the jury, I am going to let it stand.

Next qustion.

Q When was your book returned?

A Eighteen months later by a federal court order.

Q What was that?

A By a federal court order.

Q Now, what happened with relation to the 1966 election?

MR.MINA: Your Honor, we could save the Court's time and the jury's time. We will concede that the 1966 election was overturned and a new election ordered in 1969.

THE COURT: The Court will take judicial notice

of that and the jury will accept that as the fact.

MR. BERGADANO: And that Mr. Morrissey ran in that election and if he will testify as to what happened, we can get the whole thing out of the way.

THE COURT: All right. Let's move it along.

So the 1966 election, ladies and gentlemen, was set aside. We now move to a new election.

MR. McINERNEY: May I have it stipulated that it was set aside in the District Court, an appeal was taken by the union, and the Court of Appeals affirmed the District Court, and that the election was set aside then, finally set aside.

THE COURT: Yes. That is sufficient, because the Court is aware of the litigation.

MR. McINERNEY: The jury is not, your Honor.

MR. BERGADANO: It wasn't set aside.

THE COURT: It is now.

MR. BERGADANO: It wasn't set aside in all respects, your Honor. There was a further election held. Mr. Morrissey ran in it. Mr. Morrissey can tell what happened in that election.

THE COURT: What is important to us here from Mr. Morrissey's point of view is that a Court of competent jurisdiction set aside the 1966 election and a new election

was held.

When was it held, Mr. Morrissey?

THE WITNESS: In 1969, your Honor. I believe it was March.

Q Now, in May of 1968, will you tell us what happened?

A In May of 1968 I became aware of the fact that the national office was using the officers' pension fund --

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

Q Well, did you do anything in May of 1968?

A Yes.

MR. MINA: Your Honor, again to save the Court's time and the jury's, we will concede that Mr. Morrissey brought another lawsuit based on that.

MR. McINERNEY: Will you concede that over $800,000 was returned --

MR. MINA: Objection; move to strike.

MR. BERGADANO: Objection.

MR. McINERNEY: Your Honor, he is making concessions to stop the testimony.

THE COURT: All right. But don't make speeches, either of you.

MR. McINERNEY: I apologize. I am being cut

short.

MR. BERGADANO: And here the time sequences are of some relevance, your Honor.

THE COURT: Let us take it one step at a time.

In May 1968 you brought some sort of a lawsuit; is that right?

THE WITNESS: No, your Honor. In May of 1968 I wrote a letter of demand to the secretary-treasurer of the union asking him to --

THE COURT: All right. You wrote a letter?

THE WITNESS: Yes.

THE COURT: Fine.

Thereafter, did you bring some sort of a lawsuit?

MR. McINERNEY: Your Honor, may we ask him who the letter was addressed to?

THE COURT: You may. He said the secretary-treasurer of the union.

Q Yes.

But who was that at that time, Mr. Morrissey?

A Shannon Wall.

THE COURT: All right. Go ahead.

Q And what was the purpose of that letter?

MR.MINA: Objection.

THE COURT: Sustained.

Q Thereafter, what did you do, Mr. Morrissey?

A Well, there was no satisfaction from the sending of that letter, so I filed an action in this court, and in May of 1969 Judge Bonsal, in this court, handed down a declaratory judgment in our favor.

Q What happened after that?

A The union appealed.

Q Who appealed?

A I'm sorry. The defendants appealed.

The Appellate Court confirmed the lower Court's decision.

Q When was that?

A That was, I believe, in the first part of 1970, February or March of 1970.

Q In addition to affirming the District Court, did the Court of Appeals do anything else?

MR. MINA: Objection.

A Yes.

MR. MINA: Your Honor, at this point it is public record and the best evidence rule would require if there is going to be any relevant testimony, and that is questionable, that it be done by bringing in the records themselves.

THE COURT: If there is a filed opinion of the

Court of Appeals, this Court would be prepared to review it and if it was relevant and material would take judicial notice of it.

MR. BERGADANO: Yes, your Honor. It is right here in the courthouse records.

THE COURT: Very well.

Is there any objection to that being noted by this Court?

MR. BERGADANO: Yes, your Honor.

No, not by the Court, but by the jury, yes, because I don't think on the issue of relevance or pertinence it is anywhere in this case.

THE COURT: We are now up to 1970 and if I recall the events complained of happened in July of 1971.

Is that right, gentlemen?

MR. MINA: Yes, your HOnor.

THE COURT: All right. Let counsel examine and we will move along.

Q What happened after that, Mr. Morrissey?

A 1971 --

Q 1970.

THE COURT: We are still in 1970, sir.

A Well, the case -- there was an appeal to the Supreme Court of the United States. They refused to review

it, so the case was sent back to the lower Court for an accounting of the funds.

At that time I learned for the first time that Mr. Perry, the assistant to the president, had retired --

MR. MINA: Objection.

THE COURT: He said Mr. Perry had retired. I will let that stand.

Next question.

Q What else did you learn?

A I learned that he received $222,000 --

MR. MINA: Objection.

THE COURT: No, no, no.

You learned he had retired.

Did you do anything?

THE WITNESS: Yes.

THE COURT: What did you do?

THE WITNESS: We demanded that the union attorney be surcharged for the monies we could not recover from Perry and, as a result of that, Mr. Freedman, the union attorney --

MR. MINA: Objection.

MR. BERGADANO: Objection. He is trying to tie my clients into something that is not fair, your Honor.

THE COURT: Strike "as a result" as to what

followed. We will let that portion of the answer stand which precedes the words "as a result."

I consider the question to have been answered and another question would at this point be appropriate.

Q Now, in May of 1971, did there come a time you were distributing your literature in the union hall?

A Yes.

Q And do you know the date?

A The date?

Q Yes.

THE COURT: In may?

THE WITNESS: Yes.

A May 14th was my first leaflet I recall in that year.

MR. McINERNEY: Mark this for identification, please.

(Plaintiff's Exhibit No. 2 was marked for identification.)

MR. McINERNEY: May I show it to the witness, your Honor?

THE COURT: Yes, please.

Q Is that the document you were distributing on May 14, 1971?

A This is a copy, yes.

MR. McINERNEY: I offer it in evidence.

THE COURT: Show it to counsel.

MR. MINA: Objection, your Honor.

MR. BERGADANO: Objection.

I think if your Honor will look at it, I think the paper on its face will explain why we object.

THE COURT: All right.

MR. BERGADANO: I don't think it is relevant.

(Pause)

THE COURT: Did you give a copy of Plaintiff's Exhibit 2 for identification to Mr. Curran, Mr. Wall, Mr. Snow,Mr. Nimmo, Mr. Freedman or Mr. Sovel?

THE WITNESS: Yes, every leaflet I put out I mailed copies to the national office.

THE COURT: When you say "the national office" --

THE WITNESS: To the different officers.

THE COURT: To each of those gentlemen?

THE WITNESS: Well, usually to Mr. Wall and the president.

THE COURT: Do you recall specifically who, if anyone, was mailed a copy of Plaintiff's Exhibit 2 for identification?

THE WITNESS: I don't remember, your Honor.

THE COURT: You do not. All right.

MR. BERGADANO: Your Honor, I specifically object on behalf of my clients, who were counsel to the union.

THE COURT: Yes.

In view of the fact that the witness does not remember to whom he mailed or sent a copy of this document, I am going to sustain the objection at this point, but permit counsel to inquire further.

Q Did I understand you to say, Mr. Morrisey, two or three questions ago, you sent a copy of each of your pieces of literature to either the president and secretary-treasurer?

A Yes.

MR. MINA: Objection.

MR. McINERNEY: I offer it in evidence.

THE COURT: Do you want a voir dire, Counsel?

MR. BERGADANO: Your Honor, I object as to my clients, because there is no mention of them as to who he sent a copy, so, therefore, it cannot be binding on us.

THE COURT: No, it would not be binding on Mr. Freedman or Mr. Sovel, unless the plaintiff testifies clearly that he handed or mailed and did not receive back a copy of this document to your clients.

MR. BERGADANO: He doesn't purport to have sent it to my clients, your Honor, and even --

THE COURT: Let us find out.

Is that correct?

THE WITNESS: I'm sorry. I didn't hear that, your Honor.

THE COURT: Did you hand or mail copies of this document to either Mr. Freedman or Mr. Sovel?

THE WITNESS: A copy was placed in Mr. Sovel's office by me personally, yes.

THE COURT: Did you ever speak to him about it after that?

THE WITNESS: No, I did not.

MR. BERGADANO: Again I renew my objection.

MR. MINA: Your Honor, may I be allowed a voir dire?

THE COURT: Yes. That was the point.

VOIR DIRE EXAMINATION

BY MR. MINA:

Q Mr. Morrissey, did you ever learn, to your own knowledge, whether or not either Mr. Curran or Mr. Snow or Mr. Nimmo or Mr. Wall ever read that particular item?

A Of my own personal knowledge, I'm convinced that Mr. Nimmo --

MR. MINA: I move to strike the answer as not being responsive.

THE COURT: I don't like the question and I am going to ask you to rephrase it.

MR. MINA: I will.

Q Do you, of your own personal knowledge, know whether they ever looked at that article?

A Yes.

Q Who is it that you know looked at that?

A Mr. Nimmo, Mr. Sovel --

MR. BERGADANO: Objection, your Honor. I mean, he is dragging in my clients from left field.

THE COURT: He says he knew. I am going to give you a voir dire after Mr. Mina finishes.

MR. BERGADANO: Thank you, your Honor, but it was not part of the question.

THE COURT: No, it was not part of the question, but I am going to give you a voir dire anyway.

MR. BERGADANO: Thank you.

Q Is that your answer?

A Yes.

THE COURT: Let me hear the answer, please.

(Record read)

A I may include Mr. Snow.

MR. MINA: At this point, your Honor, I renew my objection as to every defendant represented other than Mr. Nimmo.

THE COURT: Very well. Before I rule, let me see if Mr. Bergadano wants to inquire further since his client's name has just been mentioned by the witness, although not in response to a particular question.

VOIR DIRE EXAMINATION

BY MR. BERGADANO:

Q Mr. Morrissey, you say you personally know that Mr. Sovel read it.

How do you know that?

A Because these particular leaflets I placed in the union hall in every office of the staff.

Q And that's how you know it?

A And into the legal office.

Q And that's how you know it; right?

A Yes. I did not personally hand Mr. Sovel a copy.

Q You did not personally hand it to Mr. Sovel?

A No.

MR. BERGADANO: Your Honor, I renew my objection.

MR. MINA: And I make the objection now --

MR. BERGADANO: Most emphatically.

MR. MINA: -- on behalf of all the defendants, your Honor.

THE COURT: The record still shows that he knows he gave it to Mr. Nimmo.

MR. MINA: May I be allowed further voir dire, your Honor?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. MINA:

Q Mr. Morrisey, how is it that you know that it was read by Mr. Nimmo?

A Because I handed it to him.

Q Did you then stand there and watch him read it?

A No, I did not.

MR. MINA: I move to strike, again, your HOnor, and to keep this out of evidence.

THE COURT: Is it being offered, Mr. McInerney, against Mr. Nimmo, for example, to whom it was allegedly handed? Is it being offered for the truth of the matter asserted there in?

MR. McINERNEY: No, I am not offering it for the truth of the matter asserted there at all, your Honor. I am offering it for the purpose of showing simply that this is one of the things that Morrissey was passing out in the

hall and is innocuous, that's all.

THE COURT: I don't like your characterization in the presence of the jury.

MR. McINERNEY: You asked me --

THE COURT: You didn't have to say that, but you said it and I am going to let it stand.

Yes, since this document is not being offered for the truth of the matter asserted and since the witness has testified that he actually handed it to Mr. Nimmo, is there an objection?

MR. BERGADANO: As far as my clients, your Honor, most emphatically.

MR. MINA: Your Honor, I will withdraw the objection as to Mr. Nimmo.

THE COURT: All right. The document, Plaintiff's Exhibit 2 for identification, is received as a document which the plaintiff was distributing in the defendant union hall on May 14, 1971. The contents of the document are not to be considered by you for the truth of the matter asserted therein. The document is received only against the defendant James Nimmo.

MR. McINERNEY: May it also be recieved against the defendant NMU? I don't understand what more the man can do. He passed it out to any national --

THE COURT: Yes, yes.

MR. McINERNEY: Thank you, your Honor.

THE COURT: Nimmo and National Maritime Union.

(Plaintiff's Exhibit No. 2 for identification was received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR.McINERNEY:

Q When was the next occasion you were in the National Maritime Union hall?

MR. MINA: I object to the form of the question.

MR. McINERNEY: All right. I withdraw it.

Q What was your next -- did you pass out leaflets further in the National Maritime Union?

A Yes.

Q When?

A I believe the next leaflet was May 27th.

MR. McINERNEY: Mark this for identification, please.

(Plaintiff's Exhibit No. 3 was marked for identification.)

MR. BERGADANO: If your Honor please, may we have a short conference at the side bar, because we can anticipate further documents and I think there should be a discussion of this at this point, which may save time.

THE COURT: All right.

(At the side bar)

MR. BERGADANO: If your Honor please, there are a whole series of these items which are political broadsides of a union election which, in a usual way, you know, are rather exaggerated, each side telling his own, as they see it, appealing for votes.

As to my clients, I think the cumulative effect would be grossly prejudicial because it contains a lot of inflammatory material. There will be nothing to show that my clients received it, read it, had anything to do with it. I think the cumulative effect of all these documents even if your Honor proscribes the admissibility, could be extremely prejudicial to my clients, because I am sure from prior testimony that there is nothing to tie my clients into this and it can't carry over into the jury's deliberations.

THE COURT: If your clients can't be tied in at all to any of the activities here, I suggest they will be leaving us at the plaintiff's case. He is unwilling to stipulate them leaving now, which would make everyone's job a lot easier, but under the circumstances I would suggest, first, that I ask counsel, how many of these documents there are going to be, because if they are

cumulative --

MR. McINERNEY: Well, the purpose is to show that he was in the hall on several occasions passing out the literature and there was no attempt to remove him until the last time.

THE COURT: If it is that, can't he say so? I don't see where the literature itself changes the matter.

MR. BERGADANDO: The contents is immaterial.

THE COURT: I suggest if they attack this particular matter on cross-examination, I would permit you on redirect examination to put in some documentation if this particular matter is really going to be an issue.

I have a feeling thatit would be more or less conceded that he was in from time to time passing out literature. Now, I don't see that this particular material makes any difference to the basic questionof his passing out literature.

There is more of an issue here, I gather, where he was passing it out.

I don't see that the fact that he was passing out literature is dispositive that he was in the hall or whatever. That has to be his testimony.

MR. McINERNEY: It is a little more than that,

your Honor, and it is this:

You see, in my opening statement, I said that he was making certain efforts.

This was not election time. In 1971 there was no election for 1973. I grant you, he may have been laying the groundwork for future elections, no doubt about it.

THE COURT: We have people now campaigning for 1976, so I don't think hat is an unreasonable statement.

MR. BERGADANO: Or 1980.

MR. McINERNEY: There is no doubt about that, your Honor.

But the point of the matter is that he was doing things, for example, for the benefit of the membership against these particular people who were in power, and that is one of the reasons why they had him arrested.

If he were passing out things in their favor, you know very well he would still be up there, and they would be patting him on the back every time he passed them.

So I am not offering this -- but just to show what he was saying in his leaflets.

THE COURT: But you don't, you see, that gets to

the offer of the truth of the matter asserted, and his declarations here, in my judgment, would not be admissible for the truth of the matter asserted.

I would suggest that you can, certainly, now that we reach May of 1971, indicate how frequently he was at the union hall, on a daily, weekly, monthly basis, and what he was doing there, which is passing out literature or making speeches or anything else that he did.

I think to put in more of these documents at this time, the purpose of which could only be to demonstrate the truth of what he was saying, would not suffice.

In other words, I don't see the objection to the hearsay rule that you can get over, and if you don't want to put this material in for the truth of the matter asserted, and they are prepared to stipulate that he was there regularly, handing out literature, it would seem to me that this can only be offered for the prejudicial effect of the material and, thus, you would be doing indirectly what I cannot see you do directly.

MR. McINERNEY: May I do this at the side bar?

I will have them marked here for identification and we will have the ruling that they are not admissible in evidence and we will proceed from there.

THE COURT: I don't know what you are going to show me.

MR. McINERNEY: This is the same type of thing.

(Documents handed to the Court)

THE COURT: I have now looked at the material.

I would rule that this declaration by the plaintiff, which is self-serving in nature, would not get over the hearsay hurdle at this point and, therefore, I couldn't admit it for the truth of the matter asserted.

To the extent that you have made an offer of Plaintiff's 3 for identification and counsel object to it going in for the truth of the matter asserted, I sustain that objection.

MR. McINERNEY: Fine.

MR. BERGADANO: And, your Honor, on the grounds that these various documents being offered cumulatively can be very inflammatory and prejudicial, particularly to my clients, I make that objection.

MR. McINERNEY: Your Honor, I don't want to keep running back to the side bar. I have two or three more which are of a similar nature. May we have a similar ruling on those?

THE COURT: Have you gentlemen seen the documents?

MR. BERGADANO: Yes, your HOnor. They have

all been marked for identification and he testified a number of times he was there and what he passed out. They were marked for identification and we are fully familiar with the contents.

THE COURT: You have the same ruling relative to similar documents which were passed out on subsequent days.

MR. McINERNEY: Fine. Thank you.

(In open court)

THE COURT: You may proceed, Mr. McInerney.

Q After May 27th, when was the next time -- did you go to the union hall again?

A Yes.

Q And when did you do that?

A Well, almost daily, but my next leaflet was -- I believe it was around June 3rd.

Q And did you pass that out inside the hall?

A Yes, I Did.

MR. MINA: Objection.

A Yes, I did.

THE COURT: You are leading him. I think that is the basis for the objection.

It is in the record, but try not to lead from this point on.

Let me just get the sequence of the visits.

As I recall it, you have already testified that you distributed some literature in the union hall on May 14th. That was Plaintiff's Exhibit 2, is that right?

THE WITNESS: May 14th.

THE COURT: Then you came back with more literature, although you may have been at the union hall, on May 27th.

THE WITNESS: Yes.

THE COURT: When was the next time after that you distributed literature?

THE WITNESS: I believe it was June 3rd.

Q And did you go back to the union hall after that?

A Yes.

Q And when was that?

A With literature, on June 18th, June 23rd, I believe.

Q Now, what did you do when you got to the union hall with your literature?

THE COURT: On all those days or on one of them?

Q On all those days.

THE COURT: All right.

A I'm not too clear on how I distributed the first leaflet, but I do know that every leaflet from the 27th on I would walk into the hall and distribute personally.

I would get to the hall probably around 10:00 o'clock. The hall opens at 9:00 -- it opens at 8:00, actually, but the first job call is at 9:00; nobody gets there before then.

Well, by that time many members are in the hall, and in the shipping hall, on the deck and engine shipping hall, and the stewards' shipping hall, there are large, round, circular rooms, and around the perimeter of those rooms there is the seating. The members would, you know, wait there for job calls.

I would go around and ask each of them if they wanted a copy; if they did, all right, if they did not, I went to the next person. And I would do this to make sure that those members who had already been in the hall, I wouldn't be able to get them outside the hall, would have them.

When I was satisfied that everyone in the hall had them, I would also go up and distribute them throughout the staff offices and I would then go outside and wait, because it is much more comfortable out there, and people felt more free to talk with me out there.

MR. MINA: Your Honor, I move to strike the last portion as to what people felt.

THE COURT: Yes.

You went outside in the fresh air?

THE WITNESS: Yes.

A I would continue distributing. How long I would be in the hall, it may be an hour, it may be two hours, it may be a half-hour, but I distributed literature in the hall all of those days.

Q Will you tell the Court and jury, as you enter the hall, what is the procedure?

A As you enter the hall, you must go through this entrance, where they have a master-at-arms, and if he doesn't know you or if he knows you too well, he will ask to see your book, and if you have your book and you show him your book, you are a member, he allows you in the hall.

I don't know what else you mean.

Q In other words, would a person who is not a book member be entitled to go into the union hall?

MR. MINA: Objection.

THE COURT: Yes. I think so. That calls for a conclusion.

I gather the master-at-arms is a sort of door-

keeper?

THE WITNESS: Yes.

THE COURT: And he either knows you or doesn't know you?

THE WITNESS: Yes, your Honor.

THE COURT: And if he doesn't know you, he asks to see your book?

THE WITNESS. Yes.

THE COURT: And if you show him your book --

THE WITNESS: Well, that's the "open sesame." You walk in.

THE COURT: That means you are a paid-up member, so to speak?

THE WITNESS: Yes. You have a picture in your book and he can identify you through that picture.

THE COURT: And then you walk in?

THE WITNESS: Yes.

Q Are you familiar with the policy within the union? Were you familiar with the policy in the union in July of 1971?

A Yes.

Q And on July 1, 1971, were you at the union hall?

A Yes.

Q What time did you arrive there?

A Before lunch, probably around 11:00 o'clock.

Q After you arrived, can you tell us what happened?

A I was passing out leaflets in the hall and -- this is on July 1st.

THE COURT: Yes.

A And I was approached by Mr. Nimmo, who was the master-at-arms, and he told me that he was instructed to tell me that I was not to pass out leaflets in the NMU hall --

Q Mr. Morrissey, let me interrupt you.

Had anyone told you that previously to July 1, 1971?

A Yes. I was told that on May 27, 1971 by Mr. Sovel.

Q Let us go back to May 27th again.

Tell us what Mr. Sovel said to you and what you said to Mr. Sovel on that occasion.

A Well, on May 27th I was approached by a master-at-arms, whose name I don't recall, and he told me that I would have to stop passing out literature and I could do it either peacefully or I didn't have to -- or I would be ejected from the hall.

I told him that he had a job to do and I couldn't instruct him what to do, he could do what he wanted about

it, but I had every right in the world to be in that hall, I have been a member for all these years.

With that he ran to the nearest phone and had a very animated conversation with someone, and he come back and he told me that -- I'm getting the two dates confused here. I'm sorry.

Q The May 27th.

MR. BERGADANO: Excuse me, your Honor.

We have a conversation with an unnamed, unrecalled master-at-arms. It is going to be very difficult to establish where this conversation took place or to find the person on the other side, so I must object to this testimony.

MR. MINA: I will join in that objection.

THE COURT: Let me ask you this:

This was in the union hall?

THE WITNESS: Yes, your Honor.

THE COURT: How did you know the unidentified person was a master-at-arms? Did he wear some identification?

THE WITNESS: Yes.

THE COURT: What did he wear?

THE WITNESS: He wore a uniform and he wore a badge which said "master-at-arms, NMU," and he had a hat. As a matter of fact, the union knows who was at the door,

and the union knows the name.

THE COURT: Please.

In any event, you had a conversation with this uniformed person. The jury is to accept that portion of it. It is up to you to accept it or reject it as far as the truth is concerned.

Following that conversation, he went to the telephone and had a telephone conversation with someone?

THE WITNESS: Yes.

THE COURT: After the telephone conversation, did anything else happen? If so, what happened?

THE WITNESS: Yes. Shortly after that --

THE COURT: This is now May 27th?

THE WITNESS: May 27th, right.

It was very shortly after that, probably ten, fifteen minutes after that, I was over in the deck department hall passing out leaflets, talking with a few members, when in came Mr. Sovel, the port agent, Vice-President Bocker, the chief of security, three of four masters-at-arms, and up to this point everything was very calm, peaceful, there was no disturbance of any kind. But all these big officials zeroing in on me caused a little --

MR. BERGADANO: Your Honor, I object.

MR. MINA: I object.

THE COURT: Yes. Please, let's not get over-dramatic.

THE WITNESS: All right. I'm sorry.

THE COURT: I gather after Mr. Sovel and the other men you identified entered the room where you were, you had a conversation with some or all of them; is that correct?

THE WITNESS: With all of them, but then there was a point reached where Mr. Sovel said something to the effect "We all can't talk together. We can't talk together." So he acted as spokesman.

THE COURT: What was said?

THE WITNESS: He said, "Morrissey, you are in violation of a union policy in passing out literature," and I told him"what policy is that?"

And he said, "It is posted on the board."

I said it was an unsigned statement, it was an edict handed down by the national office to silence opposition --

MR. MINA: I move to strike it.

THE COURT: Wait a minute. If he said it --

THE WITNESS: I said it.

THE COURT: -- I am going to allow it.

You did say it to Mr. Sovel?

THE WITNESS: Yes, I said it.

THE COURT: And to the other gentlemen who were present?

THE WITNESS: They were all there.

I said it was an edict handed down by the national office, there was no such policy, that I was a member of this union before most of them national officers up there, I was a member of the union for longer than that time, I am an ex-official of that union, I know that policy was never adopted by the membership, it was something that appeared only since I attempted to pass this resolution in the Port of New York, which is what these leaflets are all about.

With that, he said,"Well you are also violating a State law."

Oh, incidentally, I told him, "If I am violating union policy, you or any member can bring me up on charges under the constitution, you are free to do that," and I invited them.

He said then, "You are also violating a State law."

I said, "If I'm doing that, you can call the police and have me arrested."

Q Did I understand --

THE COURT: Wait a minute.

Does that finish the conversation?

THE WITNESS: Yes.

THE COURT: Very well. Next question.

Q Did I understand you to say that that was an unsigned statement?

A And undated.

Q Was it signed?

A By Shannon Wall, yes.

MR. McINERNEY: Mark this for identification, please.

(Plaintiff's Exhibit No. 4 was marked for identification.)

A Yes, that's a copy of the statement.

Q Let me ask you the question first.

Is that the statement that Mr. Sovel called your attention to?

A I'd better check it again.

Yes, it is.

MR. McINERNEY: I offer it in evidence.

THE COURT: This statement was posted, was it, in the hall?

THE WITNESS: Yes, your Honor, it was.

THE COURT: On July 1, 1971?

THE WITNESS: It was posted on the day that we had this thing with Mr. -- I had this thing with the attorney, Mr. Sovel, which I think was the 27th.

THE COURT: May 27th?

THE WITNESS: Yes.

THE COURT: I see. All right.

MR. MINA: There is no objection, your Honor.

THE COURT: Very well.

THE WITNESS: He pointed out to me --

THE COURT: We will now see.

MR. BERGADANO: No objection, your Honor.

THE COURT: Plaintiff's Exhibit 4 for identification will be received, there being no objection.

(Plaintiff's Exhibit No. 4 for identification was received in evidence.)

Q On that date, were you familiar with the union policy?

A Yes.

Q Did that notice accurately reflect the union policy?

MR. MINA: Objection.

MR. BERGADANO: Objection.

THE COURT: Sustained.

Q Between May 27th and July 1, 1971,did you pass

out literature in the hall?

A Yes, almost daily.

Q And did anyone object to your passing out literature in the hall on those days?

A No, no.

Q Now let us return to July 1, 1971.

THE COURT: I think this would be a good time for us to take our break, it being five after 3:00.

Ladies and gentlemen, we will take a ten-minute recess and begin promptly at 3:15.

Please do not discuss the case among yourselves, keep an open mind on all facets of the case, draw no conclusions whatsoever from what you have heard so far.

The jury is excused and may return in ten minutes.

(Recess)

(In open court; jury present)

DIRECT EXAMINATION CONTINUED

BY MR. McINERNEY:

Q That takes us to July 1, 1971.

Will you tell us what happened on July 1, 1971, Mr. Morrissey?

A On July 1, 1971 --

THE COURT: You testified at least in part on this.

You told us you arrived at the union hall at about 11:00 o'clock, you were passing out leaflets and you were approached by Mr. Nimmo.

Why don't you pick it up at that point?

THE WITNESS: Yes.

A Mr. Nimmo told me that he was instructed by his boss, Mr. Snow, to inform me that if I didn't stop passing out literature in the hall I was going to be arrested.

I said, "Yeah, okay, James," and I ignored it.

Probably forty-five minutes or an hour later, four policemen entered the building. Two of them came over to me. One of them asked me if I was Morrissey. I said, "Yes."

He said, "We were just called down. We were told to tell you to stop passing out literature in the union hall or we will arrest you."

I told them, "On what charge?"

He didn't -- he seemed confused. He didn't give me a charge.

I pointed out to him at that point that there must be some mistake, that I was a member of this union for 30-some-odd years, I was a full book memeber, I had every right to be in the hall, I had a First Amendment

right to pass out the pamphlets here, and with that the arrival of the police in the building created a little gathering --

MR. MINA: Objection.

MR. BERGADANO: Objection.

THE COURT: Yes.

A Well, with that, Mr. Nimmo suggested to the policemen that maybe we should go up on the fourth floor and straighten this out with Mr. Snow.

He said, "All right,let's try that. Let's do that."

We all went up and when I arrived at Mr. Snow's office, I noticed the other two policemen who originally came in with the other two were up there, and as we came in I said to Snow, I said, "Look, Charlie," I says, "What's this all about?"

I says, "This can't be for real."

So, with that, he just ignored what I said and he called in the policeman who had me, who took me up, and he says, "Come into my office. I want to show you something in the book."

So they went into this inner office, closed the door, and five minutes later, approximately, they came out and Mr. Snow said that Nimmo will be the complainant

in this, and the officer again asked me if I was going to continue to distribute leaflets.

I said, "If I can't be shown I'm not violating the law, yes, because I have a right to."

He says, "Okay, let's go. We are going down to the station house and book you."

So we went down to the shipping floor. When I got outside there were three police cars there with two more police, and it was very embarrassing --

MR. MINA: Objection, your Honor.

THE COURT: I will let it stand. He said it all right.

A I was taken out and -- in the beginning when he said he was going to make the arrest, one of the officers made an attempt to put handcuffs on me and the other one said, "I don't think it will be necessary."

We went down to the car and went to the Sixth Precinct at Charles Street, and there I asked permission to call my wife, which I did. I don't recall whether I called my lawyer or she called him.

Then I got a call from -- my wife had contacted other people and I got a call from Mel Wulf, the general counsel for American Civil Liberties Union, and Paul Chivney --

MR. BERGADANO: Objection.

THE COURT: You received some telephone calls at the precinct. You were taking these calls?

THE WITNESS: Yes.

THE COURT: You were permitted to take them?

THE WITNESS: Yes.

THE COURT: Very well.

A I got a call from Michael Armstrong.

THE COURT: All right. That is another gentleman, fine.

You got three calls there so far. Who else called you there?

THE WITNESS: My lawyer.

THE COURT: Four calls; all right.

Then what happened?

THE WITNESS: And -- well, I was questioned by the arresting officer. There were forms to fill out.

I was asked -- I'm not quite clear if I was going to be -- there was a bond, or I would be released in custody of someone who --

MR.MINA: Your Honor, I object.

MR. BERGADANO: Can we simply have a statement from the witness as to what happened, not what went on in his mind?

THE COURT: Yes.

I think now you reached the point where you were being questioned by the arresting officer.

THE WITNESS: Yes.

THE COURT: Then what happened after he asked you some questions? Were you taken somewhere?

THE WITNESS: Well, I was in this inner office and he was typing up this report and -- I find it hard to recall what happened that day. I was very upset and I was confused and it was a trying situation -- experience.

I'm not even sure how long I was there. It was probably a couple of hours, maybe longer. But I finally left and I honestly don't recall if I went to my lawyer's office or if I went home or where I went.

Q Thereafer, did you appear in court?

A Yes.

Q What day did you first appear in court?

A I don't recall the date.

THE COURT: Was it a day or two or three afterwards?

THE WITNESS: No, no. It was probably a week later, ten days later.

A Oh, they did give me this -- they gave me this notice of some kind that I was to appear for an arraignment,

and that sometime later, maybe a week or ten days later, we appeared in court, yes.

Q On the date you appeared in court, what happened?

A Well, the charges were thrown out by the judge.

MR. BERGADANO: Objection, your Honor.

A I know there was --

MR. BERGADANO: Excuse me, Mr. Morrissey.

There is an official record made in the court as to what occurred that day, and I believe, your Honor, that would be the best evidence of what occurred, not what this witness' conclusions of what occurred are.

THE COURT: If there is a record, certainly it will be the best evidence. The jury heard what this witness has said. I am going to let it stand.

Next question.

Q Did you suffer damages as a result of this --

THE COURT: Sustained.

MR. MINA: Objection.

Q What expenses did you suffer, Mr. Morrissey?

THE COURT: What expenses did you incur?

THE WITNESS: Well, I incurred a legal bill.

THE COURT: How much?

THE WITNESS: A thousand dollars.

I lost employment.

Q How much time did you lose from your employment?

A A couple of weeks.

MR. MINA: Excuse me, your Honor. I am afraid I didn't hear the answer.

THE COURT: Lost employment.

"How much time did you lose?" "A couple of weeks."

MR. MINA: Thank you, your Honor.

Q What is your average weekly income or what was it at that time?

MR. BERGADANO: Your Honor, I must object as to this, because we have a broad statement he lost employment. This gentleman is a seaman. I don't think he testified he works every day of the year. It's not a 9:00 to 5:00 job on a five-day-a-week basis. That is a rather broad statement.

THE COURT: That is a matter that you can go into on cross-examination if counsel for the plaintiff does not specify now what the facts were, which I think he should do.

You say you lost employment?

THE WITNESS: Yes.

THE COURT: Had you been working up to July 1, 1971?

THE WITNESS: No, no, I was ashore.

THE COURT: What employment did you lose subsequent to July 1st?

THE WITNESS: You see, this incident prevented my reshipping.

I have a steady job; I have one ship. I have been on that one ship for the last four years and I was off this ship at the time on a medical, but I was fit for duty and ready to go back to work when this thing happened, and it prevented my going back to work.

MR. BERGADANO: Excuse me, your Honor, I object. He said he was off a ship on medical, he was on shore leave, and he personally says he was ready to go back, and I think that is for medical evidence.

THE COURT: I suggest that this is a subject that you can bring out.

MR. BERGADANO: Thank you, your Honor.

THE COURT: I think it is appropriate cross-examination.

In any event, it is your testmony that this incident prevented you from returning to sea for "a couple of weeks"; is that right?

THE WITNESS: Yes. Offhand, I really don't recall.

THE COURT: I'm sorry?

THE WITNESS: Offhand, I really don't recall the actual amount of time, but we have records, I'm sure, someplace to support it.

Q How old are you, Mr. Morrissey?

A I'm fifty-nine.

Q Are you married?

A Yes.

I -- I have been married twice. I have a daughter, who is thirty years old. I have a grandchild.

Neither my former wife or my present wife have ever been Trotskyites or communists --

MR. MINA: Objection.

A Mr. Curran accused my wife of being so.

THE COURT: Please, sir, that is not responsive to anyone.

At the moment there is no pending question as to yoru wife's or wives' politics.

MR. McINERNEY: All right, your Honor.

THE COURT: The jury will disregard the remark of the witness.

Remarks by witnesses are supposed to be in answer to questions. Since there was no pending question, the jury will disregard the remark.

You may proceed, Counsel.

Q Are you familiar with the national organ of the NMU?

A Yes.

MR. McINERNEY: I would ask that this Page 24 in the NMU Pilot, July 1966, Page 24, be marked for identification.

xxx (Plaintiff's Exhibit No. 5 was marked for identification.)

Q I show you Plaintiff's Exhibit 5 for identification, and I ask you, is that the official organ of the National Maritime Union, The Pilot?

A Yes. This is the NMU Pilot for July 1966.

MR. McINERNEY: I offer this page in evidence.

MR.MINA: Objection, your Honor; totally irrelevant to this cause of action.

MR. BERGADANO: And objection on behalf of my clients, your Honor, certainly.

THE COURT: Which page is it?

MR. McINERNEY: Your Honor, I might call your attention to it (indicating).

THE COURT: This is the election that was set aside, isn't it?

MR. McINERNEY: That's right, your Honor. But

I am offering it for what they say about Mr. Morrissey there. That is published to the entire membership.

MR. BERGADANO: If your Honor please, may I ask whether this is being offered against my clients as well? Because if it is, I most emphatically object.

MR. McINERNEY: No, your Honor, I offer it just against the other defendants.

As a matter of fact, I don't offer it against Mr. Nimmo or Mr. Snow, either, just Curran, Wall and the NMU. They were present at that meeting, your Honor; I call your attention to that.

MR. MINA: Your Honor --

THE COURT: Please, please, please.

It is not being offered against any of the other defendants?

MR. McINERNEY: No, your Honor.

THE COURT: I will speak with counsel at the side bar.

(At the side bar)

THE COURT: I gather that this is being offered by the plaintiff against the three defendants whom you have indicated.

MR. McINERNEY: Yes, your Honor.

THE COURT: To support the allegations of malice;

is that right?

MR. McINERNEY: That's right, your Honor.

THE COURT: Show me exactly how this supports those allegations.

MR. McINERNEY: Well, your Honor, they accuse him of having a prior conviction.

I am going to elicit from Mr. Morrissey -- we have a file which was kept within the union, also. I am going to elecit from Mr. Morrissey that he was granted a full pardon on these charges, number one.

THE COURT: Do you have a copy of the pardon?

MR. McINERNEY: Oh, yes, absolutely, your Honor.

In addition to that, your Honor, I would say to you that we have other materials which I haven't offered because of your Honor's rulings which were published in March, you see, just before the election.

This is March 9th. This other thing was published before the election.

You notice this came out after the election. This is July. It is the July issue of The Pilot. It is July 1966.

In the March campaign issue they say it had already been put out in The Pilot. I have not gone into that because of your Honor's rulings. There is no reason

to spread that to the entire membership except for malice.

THE COURT: This is some five-plus years before the event in question, and I must say as time passes you have to weigh the thing more carefully.

Let me hear from Mr. Mina.

MR. McINERNEY: May I say one further thing, your Honor.

In these relationships, time neither acts to mitigate the thing or to exacerbate it. If the thing is a continuous, just an overall argument after argument, year after year after year, it gets worse instead of better, and I think that is what we have here.

If it were just something that happened on July 1st, it would be just something that they will say, well, it just happened inadvertently or by accident, but this is a long history.

THE COURT: I will hear you, Mr. Mina.

MR. MINA: We take the position that because of the time, this is absolutely irrelevant to this cause of action.

This suit is for malicious prosecution on July 1, 1971. We certainly thing that the plaintiff is entitled to show malice in and around that time period, but certainly not to go back to 1966.

In addition, this, in and of itself, shows no connection between the defendants that the plaintiff is trying to connect it to, specifically Joseph Curran and Shannon Wall. He has taken the position because he was the president and he the secretary-treasurer, they were responsible for it and acted with malice in putting this in.

What that states is he was convicted of a crime, which he has admitted to.

THE COURT: This is being offered against Mr. Curran, Mr. Wall and the Union; is that right?

MR. McINERNEY: That's right, your Honor.

THE COURT: Nobody else?

MR. McINERNEY: No, sir.

THE COURT: And who are t he editors of The Pilot according to --

MR. BERGADANO: I believe that is on the first page.

MR. McINERNEY: If it is not in the first page, it is in the constitution, your Honor. I have it in the constitution. It is the national office is the editorial board of The Pilot and I have it in the deposition.

MR. BERGADANO: I think your Honor has it on the contents page. Usually there is a listing of the editors

and so on.

THE COURT: There is a listing here of the national officers and then another person is listed as editor.

MR. MINA: Yes, your Honor.

As a matter of fact, before we get to it later in the trial, we would respectfully point out while the Court is ruling on this that Mr. Curran has testified in several depositions that there were many, many articles that he never read and that they were not, in fact, editors. It is merely a designation because they are national officers.

THE COURT: I am prepared at this point to admit this against the union since it is an official union publication.

Do you have any law to the effect that a union, an unincorporated association, cannot have malice as a matter of law?

MR. BERGADANO: That is a good question.

MR. MINA: That is a good question.

I would certainly take the position that a union is made up of individuals, and if the allegation is that malice is to be attributed to the union, there must be a direct showing of malice on the part of the people to whom it would be attributed from.

THE COURT: At this point, I am going to admit this page against the NMU.

There is no support in the record as it exists now that this was either ordered or approved by Mr. Curran or Mr. Wall, and under the circumstances, inasmuch as this is an official union organ, I am going to admit it, but only against the NMU.

So your objection is overruled to the extent you object on behalf of the NMU. In all other respects, it is sustained.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Thank you, your Honor.

(In open court)

THE COURT: Plaintiff's Exhibit No. 5 for identification is received only against the NMU.

xx (Plaintiff's Exhibit No. 5 for identification was received in evidence.)

MR. McINERNEY: May I read that portion to the jury, your Honor, or shall I hand it to them?

THE COURT: If you want to read it, you may read it.

What counsel is reading now may be considered by you, ladies and gentlemen, only when you are considering the plaintiff's case against the union, the National

Maritime Union of America.

MR. MINA: Your Honor, I respectfully request, to make it clear, that that means the union, because it is their official organ, and not against Mr. Curran and Mr. Wall, Mr. Nimmo and Mr. Snow.

THE COURT: It is not being received, nor is it to be considered against any of the individual defendants.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Thank you, your Honor.

MR. McINERNEY: These are minutes of the national office meeting March 9, 1966.

Present at the meeting, among others, Secretary-Treasurer Shannon J. Wall.

The following is a complete list of candidates, and I will skip that portion of it.

"James M. Morrissey, candidate for secretary-treasurer, who had been notified that his candidacy was to be discussed, was called in and the following statement was read to him," and I quote:

"The national office has reviewed the papers which you submitted in connection with your candidacy for the office of national secretary-treasurer. The national office has also been informed, both by yourself and through the Port of New York, that your answer to

Question 8 of the questionnaire and Question 7 of the bond application form were false in that you do have a prior conviction for armed robbery, which is a felony. Despite these misstatements, your name will appear on the ballot. However, these false statements in the papers create a serious question as to whether you have violated Article 10, Section 6 of the NMU constitution, which states 'any member who submits false information as to his qualifications to run for office shall be charged with a violation of this constitution and tried in accordance with Article 21. If found guilty, he shall be expelled from membership.'

"Accordingly, the national office, pursuant to its duties under the constitution, is giving this matter further study to determine whether charges should be filed against you. In the meantime, you will be permitted to be a candidate, but a full report will be given to the membership.

"Mr. Morrissey stated in reply that he sent a letter explaining the items in question."

DIRECT EXAMINATION CONTINUED

BY MR. McINERNEY:

Q Mr. Morrissey, at the national office meeting, did you ask that -- what did you ask -- when you submitted

the letter? What did you say?

A Well, I had mailed --

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

MR. McINERNEY: Your Honor, he is speaking to the national office, which is comprised of Shannon Wall --

MR. BERGADANO: Your Honor, I don't think it is proper for Mr. McInerney to testify.

THE COURT: No, that's correct.

Next question.

MR. McINERNEY: I have no further questions.

THE COURT: Very well.

We will proceed now to cross-examination, gentlemen.

MR. MINA: Thank you, your Honor.

/14
orrissey
2pm
ollows
H
XXXX

GTjw 1 Morrissey-cross

CROSS EXAMINATION

BY MR. MINA:

Q Mr. Morrissey, is it your testimony that on May 27, 1971, you were passing out literature in and around the union hall?

A Yes.

Q As a matter of fact, on May 27, 1971, did you go into the union hall with that literature?

A Yes.

Q Could you tell the jury, when you walk into the union hall, is there a special section for the master-at-arms?

A There is a master-at-arms station right at the door as you go into the entrance, yes.

Q Is he behind some type of a desk?

A No.

Q Is he standing right there by the doors as you walk in?

A Yes.

Q So that on May 27th, you walked in with this literature that you told us about, is that correct?

A Yes.

Q And you distributed that in the union hall? Is that correct?

A Yes.

Q And on May 27, 1971, you were aware of the notice that was posted, which has been introduced into evidence and signed by Shannon Wall, is that correct?

A I believe I testified that Mr. Sovel pointed it out to me, yes,

MR. BERGADANO: Objection, your Honor.

Q The question, Mr. Morrissey, is, were you aware --

THE COURT: Strike that. It is not responsive. Question.

Q You were aware of that notice on May 27, 1971, is that correct?

A Yes, I was.

MR. MINA: Could I have that notice?

THE COURT: That is Plaintiff's Exhibit 4 in eivdence.

MR. MINA: Yes, your Honor.

Your Honor, may I request before doing any further questioning that the jury be allowed to see this document, because I don't believe they have seen it yet?

THE COURT: Yes.

(Pause)

THE COURT: You may proceed, Mr. Mina.

MR. MINA: Thank you, your Honor.

Q On May 27, 1971, were you told by anyone that you would walk outside the building and distribute the literature?

A Did I tell anyone?

Q No. Were you told by anyone?

A I don't recall that.

Q Were you aware of the fact that you could walk outside the building and distribute the literature?

A Of course.

Q And no one had stopped you from distributing literature outside the building, had they?

A No, no.

Q As a matter of fact, Mr. Morrissey, you knew that the designated area to distribute literature was outside the building, didn't you?

A Designated? No, I was not aware of any designated area.

Q But nobody stopped you outside the building, is that correct?

A Nobody stopped me outside the building.

Q You already testified, isn't it correct, that what you would do on many, many, many occasions was to stand outside the building and up to Seventh Avenue

gtjw 4 Morrissey-cross

and hand the leaflets or pamphlets to the seamen as they would walk up the block?

A Yes, I did that.

Q When was the next time you went to the union hall with pamphlets after May 27, 1971?

A Well, it was most likely the following day

Q As a matter of fact, isn't it correct that you went almost every day to hand out leaflets and pamphlets at the union hall?

A During this period, yes.

Q During this period, could you tell the jury what that period is that you are talking about?

A This is the period that commenced on May 14th. At that time I had attempted to pass a resolution --

Q All right. Mr. Morrissey, just the period is what the question is.

A The period?

Q When you talked from May 14th, are you saying you were there almost every day from May 14th up until July 1st, the date of the arrest?

A Yes, more or less, more or less.

Q All right.

As a matter of fact, you were at the union hall almost every day during that time period because you

were on a medical leave from the ship, weren't you?

A I was off on a medical leave, yes.

Q As a matter of fact, you weren't working for that whole period of approximately six or seven weeks before the arrest took place, isn't that correct?

A I was not working because I was on the beach, yes, I was ashore. But whether I was fit for duty at that point I don't know. I don't recall.

Q You were on medical leave at that time?

A I was on medical leave, yes.

Q So that form almost every day from May the 14th on, you were handing out literature in and around the union hall, is that correct?

A Yes.

Q Do you recall handing out literature on May 28, 1971?

A The specific date I don't recall, but I probably did because, as I say, I did this daily, practically daily and I did on the 27th. I most likely did the 28th, but I can't be that sure and say yes.

Q Did you also do it on the weekends?

A No. The hall was closed.

Q All right. So that the only time you did it was Monday through Friday, is that correct?

gt 6 Morrissey-cross

A When the hall was open, yes.

Q And you did this for almost every day between May 14th and July 1st, 1971, is that correct?

A Yes.

Q All right.

On those dates that you were at the union hall between May 14th a , let's say, June 30th, 1971, did you on all of those occasions walk into the union hall and pass the master-at-arms?

A And pass the master-at-arms?

Q Yes.

A Well, it was usually one there. Yes, I passed him

Q And he saw you walk in with the leaflets, is that correct?

A Yes.

As a matter of fact, the first period -- the first people who had aske me for my leaflets were the master-at-arms so they could bring them up to the sixth floor, they said. They asked me for these.

MR. MINA: I could move to strike that as not being responsive.

THE COURT: Strike it. The jury will disregard it.

gtjw 7 Morrissey-cross

Q Mr. Morrissey, is it your testimony to this jury that for a period of approximately six or seven weeks you were going into the union hall and distributing literature in the building?

A More or less, yes.

Q Other than the date that you mentioned to us before, May 27th, when you said somebody said something to you about passing out literature on that date, did anybody stop you from passing out literature during the next five or six weeks?

A Anyone stop me?

Q Yes.

A No.

Q Did anyone ask you to walk outside and start passing out the literature?

A No.

Q So that as a matter of fact, for a period of five or six weeks, despite the fact that you knew that there was a poster up and a notice stating you couldn't distribute in the hall, nobody called the police during that five or six weeks, did they?

A No.

Q It wasn't until July the 1st, after you had been distributing literature against the notice that was

posted, that somebody finally said they were going to call the police if you didn't stop?

A Yes.

Q Was the person that told you this Mr. Nimmo?

A Well, the first person to tell me was Mr. Sovel.

Q And did they ask you to stop passing it out in the hall pursuant to the notice and go and give it out outside?

A Yes.

Q Did you refuse?

A Yes.

Q Did they tell you at that point they were going to have to call the police if you refused to get out of the building?

A Yes.

Q Did they then call the police?

A Obviously.

Q When the police arrived, did the police not then again tell you that if you went outside the building there would be no arrest?

A They told me if I didn't stop distributing inside the building that they had gotten a complaint to have be arrested.

gtjw 9 Morrissey-cross

Q And, again, you refused to go outside the building to give out the literature, is that correct?

A After asking the police under what section of the law I was violating the law, yes. If they could show me that I said I would stop.

Q Was it at that point, Mr. Morrissey, that you were finally arrested by the police and taken to the Charles Street Station?

A It was after I was taken up to Mr. Snow's office and Mr. Snow called this police officer in to show him something in the book.

MR. BERGADANO: Your Honor, I must object to this, unless he was present and he does not say he was present, he says the police officer went into the office with somebody else and showed him something.

THE COURT: He did say something to the effect that Mr. Snow spoke to the office in his presence and said, "Come into my office and I will show you something in the book."

That is what I recall. That I will let stand.

MR. BERGADANO: What book and what --

THE COURT: We don't have any idea what book, the jury does not have any idea what book, the Court does

gtjw 10 Morrissey-cross

not have any idea what book.

MR. BERGADANO: Thank you, your Honor.

Q Following the time that you were in Mr. Snow's office and then you came down with the police, did you then go to the Charles Street Station?

A Yes.

Q Isn't it a fact, Mr. Morrissey, that you were not handcuffed?

A Yes.

Q Isn't it a fact, Mr. Morrissey, that you were not fingerprinted?

A I don't believe I was. I don't recall what happened that day. It was very muddled.

Q Isn't it a fact, Mr. Morrissey, that you were not photographed?

A I don't recall that, either.

Q Isn't it a fact, Mr. Morrissey, that what they did was give you a summons, something like a parking ticket, and ask you to come back to the court for your arraignment?

A I was given a summons to appear in court at a future date.

Q All right. And between the time that you were given that summons in the precinct and the time that

you came back to appear in court, were you in a courthouse as a result of this incident for any reason between that time?

A I believe I was in the courthouse twice.

Q What was that for?

A Once for the arraignment and then the trial.

Q So that the total amount of time that you put in was to come back for the arraignment on or about the 13th of July and then for the trial on or about the 20th of July, is that correct?

A I'm not sure of the dates.

Q Isn't it a fact that at the arraignment one of the two charges was dismissed or dropped?

A One of the two -- yes, was dismissed.

Q And that on the second date that you came back , the second one was dropped because of whatever the legal proceedings?

A It was dismissed.

Q All right.

Could you tell the Court and the jury, how much time did you spend in court on July the 20th, the day that the charges were dismissed?

A Well, I know it was pretty lengthy because we had to go from one court to another. There was some

kind of a mixup and the Judge had to move everything up to another floor.

It may have been a few hours. I don't recall exactly.

Q And could you tell us how much time you spent in court on the date of the arraignment?

A I don't recall. It wasn't -- a few hours, probably.

Q On the date of the arrest, I believe you testified that you were in the police station for a couple of hours, is that correct?

A At least that, yes.

Q Could it have been 30 or 45 minutes?

A Oh, it had to be longer than that.

Q Was the police officer that brought you in with you while you were filling out the forms?

A He filled the form out. I only answered his questions. Yes, I had to be with him.

Q And did you leave with him?

A Leave with him?

Q Yes.

A Leave the building, leave the police station?

Q Yes.

A I don't believe so. No.

gt w 13 Morrissey-cross

Q Did you leave with either of the police officers?

A Leave the police station?

Q Yes.

A No.

Q Is it your testimony that they left you in the police station and went out of the building?

A I don't know where they went, but I know at one point I was released with this summons to appear at a future date after having talked -- after my lawyer having talked with them over the phone.

Q And your lawyer at that point was Mr. McInerney, is that correct?

A Yes.

Q Did you call Mr. McInerney immediately following the arrest?

A I'm not sure whether I called or my wife called him, but I do know he called me.

Q Had you indicated to Mr. McInerney at any point before the arrest that there was a possibility you were going to be arrested?

A No, sir. I never dreamed I was going to be arrested.

Q You stated before that legal fees were $1,000,

gtjw 14 Morrissey-cross

is that correct?

A Yes.

Q Were those for Mr. McInerney?

A Yes.

Q Were those for the three --

A Well, for the firm of Duer & Taylor.

Q Have you ever paid that bill?

A No, not yet.

Q Have you ever been sued for it?

A Not yet.

Q Could you tell us to the best of your recollection when after July 1st, 1971 you next returned to work?

A It must have been within a month. I don't recall, really.

Q Could it have been in August?

A Pardon?

Q Could it have been in August?

A July, August -- it could have been.

Q Just to make one point, Mr. Morrissey, you said you arrived at the union hall at about 11:00 o'clock on July 1st, 1971, is that correct?

A Yes.

Q For how long a period of time were you in the

union hall before the police actually came and took you to the precinct?

A Well, it must have been a couple of hours.

Q So it was for a couple of hours that you were distributing the literature, is that correct?

How much time elapsed between --

A Excuse me --

THE COURT: I don't think there was an answer to the last question, counsel.

A You say a couple of hours distributing literature. It took me probably 15 minutes to distribute the literature in the hall. I would be talking with members and if a member come in he may come over and ask for a copy or I would see him and go over and hand him one.

The actual distribution of the literature was probably 15 minutes.

Q I don't want you to think how long it actually takes to hand it out.

At what time did somebody first say something to you that day about going outside to distribute the literature?

A Well, it was shortly after I come into the hall, and that was by Nimmo.

gtjw 16 Morrissey-cross

Q So that if the police arrived after 1:00 o'clock, it is your testimony to this jury, is it not, that it was a period of almost two hours that they were asking you to leave before the police came?

A An hour anyway, yes.

I had been asked one time probably an hour before they arrived.

MR. MINA: I have no further questions, your HOnor.

CROSS EXAMINATION

BY MR. BERGADANO:

Q Mr. Morrissey, how long have you known my client, Chuck Sovel, approximately?

A Approximately?

Probably ten years.

Q You knew him for a long time before you ever spoke to him about this whole business?

A Actually, when you say know him, I know who he is.

Q You knew of him?

A I mean, we don't have any kind of -- any contacts unless it is in a case like this.

Q You are not social friends?

A No. Social? No.

gtjw 17 Morrissey-cross

Q You knew he was one of the lawyers for the union, right?

A Yes.

Q And when he spoke to you, as you say, on May 27, 1971, you knew he was talking to you as one of the lawyers for the union, right?

A Yes, I did.

Q And on that day,even before Chuck showed you the sign, had you seen it, the notice?

A I may have. I may have.

Q In fact, you saw it --

A I can't remember the specific time, but I probably did because I was aware of the fact that this thing come on the scene all of a sudden when we attempted to pass this resolution, which was on the 14th.

MR. BERGADANO: Your Honor, I move to strike.

THE COURT: Strike it.

It is not responsive.

Let us hear the question and try to answer the question asked.

Q In fact, Mr. Morrissey, you knew about that sign not long after this whole business of this new election started, after you started passing out the literature?

gtjw 18 Morrisse--cross

A The new election.

Q Well, in the May, June, July business that was going on during that year.

A This was not an election. This was not an election. This was when we attempted to pass the resolution.

Q But when this whole business started in 1971, shortly after you started distributing your literature, you were aware that that notice was put up.

A Right, yes.

Q And you kept passing out your literature in the hiring hall portion of the union headquarters?

A Yes.

Q Knowing the sign was there?

A Knowing the sign was there.

Q And Jerry Nimmo or some of the other master-at-arms had told you, in effect, "Cut it out, please go outside, the sign's up, you shouldn't do it," right?

A Yes, they told me that.

Q They had told you that before? In fact, they told you several times on more than one occasion, right?

A Yes.

Q So that when Mr. Sovel came down, as you say, with all those other fellows on May 27th, he was not the

first one to tell you about that?

A I seem to recall that the first one to point this out to me specifically, and I recall this clearly, him pointing to it and saying, "There is a posted notice on the board and it pertains to policy," words to that effect, and I read it.

Q You had been told by some of the masters-at-arms before that occasion --

A I probably had been, yes.

Q You had been? Did they pick you out specially?

A Did they pick me out specially for what? I don't understand what you mean.

Q All right. I will withdraw that. We will get around to it another way.

On May 27th of 1971, that was in the afternoon, sir, was it, when Mr. Sovel and the other people came down and talked to you in the union hall?

A It was sometime in the afternoon, early afternoon probably.

Q Sometime in the afternoon?

A Yes.

Q And this was after, during the same day that Jimmy Nimmo or one of the other masters-at-arms asked you or told you not to pass out the literature because of

gtjw 20 Morrissey-cross

the notice on the wall?

A Yes, yes.

Q Do you remember, sir, who was present at the time that Chuck Sovel came and spoke to you that day?

A Yes.

Q Please tell us.

A There was Labaczewski, the port agent; there was Pete Boker, vice-president, there was Ed Pogor, who was relieving Snow, who was sick, as security chief; there was Mr. Sovel. There were a number of different masters-at-arms whose names I don't recall. There was the master-at-arms in the front door who originally called and was speaking on the phone to someone.

AsI say, I don't recall his name, but I could get it, I know it. I know him. He's still there. And many others.

Q On that day, this is back on May 27, 1971, you said earlier that Chuck Sovel said to you that you are passing out of the literature in the union hall was a violation of union policy and he pointed out the sign, right?

A Yes.

Q Is that correct?

A Yes.

Q And you say he also said that you were violating the state law and if you continued to pass the literature that he would have to call the police and have you arrested, right?

A Yes.

Q Were you arrested on May 27th?

A No.

Q Were you arrested at any time between May 27th and July 1st for passing out literature?

A No.

Q So you just, in effect, sir, ignored what you were told and kept up passing out literaturefrom the 27th and, in fact, from the 14th for about six weeks up until July 1st,right?

A Ignored what I was told?

Q They said they --

A By the union attorney?

I ignored --

Q By the masters-at-arms, by Mr. Sovel on one occasion?

A Yes.

Q Did anybody else tell you?

A Other thanMr. Sovel and the MAS's? I don't recall?

Q You said Mr. Sovel told you once on May 27th.

A Yes.

Q You said that the masters-at-arms told you before that and after that, right?

A Yes.

Q And you continued to pass out the literature in the hiring hall portion of the union building?

A Yes, I did.

Q And the only time you were arrested was on July 1st, is that right?

A I was only arrested one time.

Q Mr. Sovel didn't have you arrested? I mean, he wasn't there and called the cops, was he?

A I don't know that.

Q You don't know that.

Was Mr. Sovel there physically the day you were arrested in your presence?

A I don't recall that, either.

Q You mean you don't know or he was not?

A I don't know.

Q You don't know? You don't remember if Mr. Sovel was there when you were arrested?

A I'm not sure whether he was there or whether he was down at the station. I'm not sure of that, no.

gtjw 23 Morrissey-cross

Q In other words, you have no recollection --

A I tell you, when I was arrested I was so fouled up and confused I don't remember what happened that day after this arrest happened.

Q You remember there were four policemen there, don't you?

A Yes, before I was arrested. I didn't --

Q Excuse me, sir.

And you remember tow policemen went upstairs with you, is that right?

A Well, I discovered that after I got up there. That's where they had gone, because they were there when I got up there.

Q Yes, sir. Please, Mr. Morrissey.

Do you remember as you testified earlier there were four policemen there?

A Yes.

Q Four policemen showed up?

A Right.

Q And you said two policemen went upstairs with you?

A I said two policemen went upstairs with me.

Q Right.

A And when we got up there --

gtjw 24 Morrissey-cross

Q Now, please. One step at a time. One step at a time.

When you left, how many people were with you to go to the stationhouse?

A This I don't recall, either.

I was put in the police car and there were two police in the car. I don't know --

Q There were two cops and you in the car?

A I'm not sure whether there was someone else in the seat with me. I don't recall that.

Q And the stationhouse is what, five or six blocks away from the union hall?

A Yes, it's in the area.

Q It is over on Charles Street, it used to be, anyhow, over near Bleeker in the Village?

A Yes.

Q And the union hall was on 12th and 13th Street, at least it was at that time, and Seventh Avenue?

A It was that precinct that had jurisdiction so it had to be close, in that area.

Q It was about five or six blocks away?

A Yes.

Q The policemen took you down there and one of the officers, right, sat you down and asked you some

questions, is that correct?

A Yes.

Q You were never locked up?

A Well, I couldn't attempt to get out of there without --

Q You were never locked up; yes or no?

A Locked up?

Q Yes.

A I was not put behind bars and I heard the key.

Q They didn't put you in a cell?

A No.

Q You sat down with the police officer, he asked you some questions, he filled out a form, is that correct?

A Yes.

Q You made some phone calls, you received some phone calls?

A Yes.

Q Of course, when you were talking on the phone, you couldn't talk to the police officer, you were having a conversation on the telephone?

A Yes, sir.

Q And you had at least five telephone conversations while you were in the police station, right? You called

your wife?

A I called my wife.

Q And you received at least four calls?

A Yes, because I recall --

Q That's all right. You received at least four calls. You had at least five telephone conversations while you were in the police station, right?

A Yes. I was being questioned --

Q And maybe more?

A I was being questioned, incidentally --

Q And maybe more, sir?

A Sir?

Q And maybe more than five calls?

A I don't recall that.

Q Back and forth.

A I don't recall that.

I made only one outgoing call.

Q And after the policeman -- do you remember his name?

You were there when we took his testimony before trial, weren't you?

A Yes. It was an Italian name. Torchiano or Tuciarone.

Q You were there the day we took his testimony,

gtjw 27 Morrissey-cross

your lawyer took his testimony in his office? You were there, right?

A Yes.

Q When he got finished asking you the questions, he filled out a summons and said, "This is a summons. You can leave now. Come back the day on the summons." Rights?

A Well, after there was a discussion with my attorney over the phone --

Q Yes or no?

A Yes, yes.

Q You were given a so-called Vera summons?

A Yes.

Q And it said you had to go to court on such and such a day?

A Something to that effect.

Q That was the end of that on that day?

A For that day.

Q You left and you were on your own?

A Exactly.

Q And then you went about whatever business you wanted to, right?

A Yes.

Q In fact, when you went up to Charlie Snow's

gtjw 28 Morrissey-cross

office, you had a discussion, didn't you, with the police officers and Charlie Snow?

A A discussion?

Q Yes, some conversation.

You didn't stand there mute, you said your own mind and your own peace, didn't you?

A Well, I remember when we entered the office --

Q Please, Mr. Morrissey.

You talked when you went up there, didn't you?

A Yes.

Q The police officer talked to you?

A Yes.

Q You had a conversation with Charlie Snow?

A You can call it that.

Q Well, quote discussion?

A Right.

Q And at one point, you said, "If you want to arrest me," and you stuck your arms out, "go ahead," or words to that effect, didn't you?

A I said that? No.

Q Did you?

A No.

Q You don't remember that?

A No.

gtjw 29 Morrissey-cross

Q Incidentally, was Abe Freedman a part of the group that was there on the 27th of May, 1971?

A No.

Q Was Abe Freedman -- did you see Abe Freedman at the union hall on July 1, 1971?

A No.

Q Did you see Abe Freedman at the police station on July 1st?

A No, I did not.

Q Did you see Abe Freedman in court the two times you were there?

A NO, sir.

Q You know Abe Freedman?

A Yes, sir.

Q And you know who he is?

A Yes, sir.

Q He is one of the counsel to the union, is that right?

A Yes, sir.

Q In fact, you know that Abe Freedman's main office is down in Philadelphia, is that right? You know that?

A I know he has a large staff here at the NMU hall.

gtjw 30 Morrissey-cross/ redirect

MR. BERGADANO: I move to strike the answer as not being responsive.

THE COURT: Strike it.

Q You know, don't you, sir, that Abe Freedman's office is in Philadelphia?

A I believe it is, yes.

Q And do you know that he also lives down there?

A Yes, I know that.

Q Okay.

MR. BERGADANO: Your Honor, I have no further questions of this witness at this time.

MR. MC INERNEY: Your Honor, I have two or three questions I omitted. One was the pardon.

THE COURT: I will let you cover it even though you didn't cover it on your direct.

REDIRECT EXAMINATION

BY MR. MC INERNEY:

Q Did you receive a pardon from the State Board of Governors in Connecticut or the State Board of Pardons in Connecticut?

A Yes, I did.

Q Was that for the offense you mentioned earlier?

A Yes.

Q Do you have the original of that pardon with you?

A With me? Yes, I do.

MR. MC INERNEY: I offer it in evidence.

(Plaintiff's Exhibit No. 6 was marked for identification)

THE COURT: Show it to counsel.

MR. MINA: No objection, your Honor.

MR. BERGADANO: I stand moot. I don't know if it is the official pardon or not, your Honor, and I don't think it is relevant.

THE COURT: Do you object?

MR. BERGADANO: No, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit No. 6 was received in evidence)

Q And that pardon is for the charges you mentioned on your direct testimony?

A Yes.

MR. BERGADANO: Objection, your Honor. It speaks for itself.

THE COURT: There might be a question. He has now answered. I will let it stand.

Q Have you ever been convicted of any other

crime?

A No.

MR. MINA: Your Honor, I realize we have an answer, but this whole line of questioning, this is not a deformation action. It is totally irrelevant.

MR. BERGADANO: Your Honor, the defendant's haven't charged him with any crime that he is talking about. All these crimes are in his youth. We didn't bring it up, they brought it up.

THE COURT: He has answered the question. I will let the answer stand.

Anything else, counsel?

Q On July 1st, 1971, when you went to Mr. Snow's office, were you given written specific charges?

A No.

Q Were you given an opportunity to prepare a defense?

A No.

MR. MINA: Objection.

MR. BERGADANO: He has answered it. I will let it stand.

The jury has heard what happened.

Q What happened? Were you given a hearing?

A No.

gtjw 33 Morrissey-redirect/recross

Q Were you given a hearing within the union?

A No.

MR. MC INERNEY: No other questions. No further questions.

MR. MINA: Just a few.

RECROSS EXAMINATION

XXXX BY MR. MINA:

Q Just to make one thing clear, Mr. Morrissey, on the date of the arrest you saw Mr. Nimmo and you saw Mr. Snow, is that correct?

A Yes.

Q You are aware of the fact that Mr. Curran was in Florida that day, weren't you?

A I was aware of the fact that -- I am not aware of that fact.

Q You were not?

A No.

Q Did you see Mr. Wall that day?

A No.

Q Did you see Mr. Curran that day?

A No.

MR. MINA: I have no further questions, your Honor.

MR. BERGADANO: No further questions, your Honor.

THE COURT: You may step down, sir.

(Witness excused)

THE COURT: I suggest in view of the time that we recess now.

We will proceed tomorrow morning at 9:30 a.m.

Ladies and gentlemen, as you go home this afternoon, I will admonish you, as I have previously, and on each time when we part, not to discuss the case among yourselves nor remain in the hearing of any other person who might be discussing the case.

In the event you should read anything about the case, see anything about the case on television, hear anything about the case on radio, you are directed to report that matter to me at once as soon as we reconvene.

Finally, you just heard one witness. There is more to come in this case. I would suggest most strongly and direct that you keep an open mind on all facets of the case until the entire case has been completed and given to you following my charge.

The jury is excused. You are directed to reassemble in your jury room tomorrow morning at 9:30.

Good night.

(Adjournment taken to April 15, 1975 at 9:30 a.m.)

gtrl

JAMES M. MORRISSEY

vs. 72 Civ. 2363

NATIONAL MARITIME UNION
OF AMERICA, et al.

April 15, 1975
9:30 a.m.

Trial resumed.

- - -

(In open court; jury present)

THE COURT: We are getting a slightly late start. I have spent some time with counsel going over some legal matters.

As you know, as the trial progresed yesterday, there were certain legal matters that were discussed at the side bar. Counsel were kind enough to bring several of them to my attention the first thing this morning and though we are going to continue to have side-bar conversations, I think we have taken care of several which would have interrupted the general flow of the trial.

I know jurors who come here, particularly on their first time of jury service, sort of wondered

gtr2a

about this business about objections which are made and sustained, they wonder if things are being kept from them.

Let me just suggest this:

We operate under the rules of evidence. The rules are inherited by us over a period of many, many years and they wre now codified in the Federal Rules of Evidence, but they require counsel to ask questions in certain ways. When you are counsel with your own witness on the stand, you are not supposed to lead that witness, that is, ask him everything up to yes or no, and yet when you are counsel on cross-examination you may lead a witness.

This is just one example.

You heard yesterday objection, leading.

You may have thought, "Gee, when one fellow asked the question the Judge sustained it, when the other fellow asked the question, he did not."

There are rules. There are rules on what we call hearsay and I am required to sustain objections which properly lie there.

There are certain things called privileges. When those arise I am required to sustain objections.

It is not to keep things from you, but the

gtr3a

time-tested theory of the thing is that this way the jury will receive a distilled version of the facts which will be from the point of view of the Court and counsel a basically reliable format and then within that format the jury makes its determination.

At times you may be sitting there wanting to ask a question yourself and you wonder why counsel doesn't ask the question or counsel didn't ask the question. There is usually a pretty good reason.

My suggestion to you, as it is to all of our jurors here, is to continue to pay the strict attention that you have yesterday and you will see the facts presented by these very competent counsel and we will have a whole picture put before you by the time the case is ready to be given to you.

You may proceed, Mr. McInerney.

MR. MC INERNEY: Your Honor, yesterday you asked me for the record in Morrissey against Curran --

THE COURT: Someone asked for it. I'm not sure I did.

MR. MC INERNEY: Here it is. I presented it to the Court. Here is the brief on appeal and here is the record (indicating).

THE COURT: Obviously what you handed up --

gtr4a

have you marked it for identification?

MR. MC INERNEY: Mark it for identification, please.

THE COURT: Very well, let us mark it for identification. It is placed on the desk here in sight of the jury and it appears to be a very thick record.

(Plaintiff's Exhibit No. 7 was marked for identification)

MR. MC INERNEY: Your Honor, I am going to call Mr. Curran as a witness by deposition and I would ask that Mr. Chapman be permitted to read the answers as I ask the questions.

THE COURT: You may do that.

As I said yesterday, it is permissible to call witnesses in person or to read their depositions.

In this case Mr. Joseph Curran's deposition will be read. The Court is to draw no conclusions from the fact that Mr. Curran is not here. You should listen carefully to the questions and the answers, you should weigh the testimony based on what you hear and, as I say, not draw any presumptions from the fact that the witness is not here himself.

All right. We will proceed with the deposition of Mr. Curran.

gtr5a

Do you have a copy of the transcript for the Court, Mr. McInerney?

MR. MC INERNEY: I filed the original, your Honor.

THE COURT: Just one moment.

I have the court file here, unless there is another court file somewhere. It doesn't appear to contain the transcript of any deposition.

If each counsel has a copy, the Court will merely listen and the jury will do likewise.

MR. MINA: Your Honor, I believe I have an extra copy of Mr. Curran's deposition.

MR. MC INERNEY: Maybe that is the original.

THE COURT: If you do, Mr. Mina, that will be fine.

You may proceed.

MR. BERGADANO: Could Mr. McInerney -- there were two sessions, your Honor.

MR. MC INERNEY: I am beginning at the beginning on December 12, 1973.

MR. BERGADANO: Thank you, your Honor.

THE COURT: Yes. I have the original transcript in front of me.

Then I see that there was a continued

gtr6a

deposition, the second volume, on April 30, 1974.

All right, you may proceed.

BY MR. MC INERNEY:

"Q What is your name?

"A Joseph Curran.

"Q What is your address?

"A 771 Northeast 33 Street, Boca Raton, Florida."

Mark this for identification, please. It is referred to in the deposition as Exhibit 1.

(Plaintiff's Exhibit No. 8 was marked for identification)

BY MR. MC INERNEY:

"Q Mr. Curran, I show you Plaintiff's Exhibit 1 for identification," which is now Plaintiff's Exhibit 8 for identification.

"I ask you, is that the copy of the president's report and president's proceeding of the 15th National Convention of the NMU, 1969?

"A Yes."

I offer it in evidence.

MR. MINA: Objection, your Honor; no relevance whatsoever to this lawsuit.

MR. MC INERNEY: Your Honor, I might call your attention to page 5 of the deposition, the first

gtr7a

question on the first two questions there.

THE COURT: Do counsel have any objection to the reading of those two questions and answers in lieu of the offer of the exhibit?

MR. MINA: Not at all, your Honor.

There is one further objection we would make at this time.

We would take the position that at this point Mr. McInerney is attempting to get into a malice question and we would respectfully submit that no foundation has been laid in this case in anyway to connect Mr. Curran with the arrest of Mr. Morrissey on July 1, 1971.

THE COURT: A man must try his case in his own way and if he does not connect up Mr. Curran with the acts which are the subject of this lawsuit, you may, at an appropriate time, make an application.

I would suggest that his offer at the moment, in view of the state of the record, is being made as subject to connection. In the event he knows now that he is unable to connect it up, it would obviously put him in a very bad position relative to any other defendants once the Court is forced to strike some testimony which is in the record.

But I must let an attorney try his case.

gtr8a

I would assume, counsel, that you are offering this evidence subject to its connection, is that right?

MR. MC INERNEY: Yes. And I might call your Honor's attention to the fact that not only am I taking Mr. Curran's deposition as Mr. Curran, but I am taking Mr. Curran's deposition as the chief administrator, the president of the NMU, and I am offering this deposition against the NMU as well as against Mr. Curran.

THE COURT: Very well.

Counsel has indicated, rather than you putting an entire report in evidence, which contains obviously considerable material, some germane and some not germane, he would not have any objection to your reading questions and answers which are contained in the deposition.

If you chose to do that, fine. But what is your choice?

MR. MC INERNEY: I will go right through the deposition, your Honor.

THE COURT: All right, let's do that, then.

MR. BERGADANO: Your Honor, may I have an instruction to the jury that until and unless anything in these depositions are connected with my clients,

gtr9a

they are not binding on my clients.

THE COURT: Yes. I think that is a fair statement.

There is a difference, I would suggest, between Mr. Curran being an individual defendant and being president of the defendant union on the one hand, which we have been discussing in your presence, ladies and gentlemen, and the status, perhaps, of Mr. Freedman and Mr. Sovel, who were attorneys representing the union at the times in question and who are also defendants in the case.

So we will all listen very carefully to see the connections which are established. I would suggest all of the evidence which is aboutto be introduced at least insofar as it relates to the individual defendants, that is Mr. Curran, Mr. Freedman and Mr. Sovel, using them only as examples, is being taken subject to connection.

The evidence is being offered against the defendant National Maritime Union, because Mr. Curran, as the plaintiff uses the expression, is the chief administrative officer.

BY MR. MC INERNEY:

"Q In your report, Mr. Curran, there is a section

headed 'The Dissidents.'

"At the address you gave to the convention you said, 'The characters involved in this attack against the union are important in this regard not as individuals, they are important for what they represent and what they have tried to do to the union.'

"What characters are you referring to?

"A The dissidents.

"Q Specifically, is Mr. Morrissey a dissident, in your eyes?

"A Yes.

"Q He is one of the characters you are referring to?

"A Yes.

"Q You go on to say, 'It's true that the Landrum-Griffin Act provides all the weapons necessary to harass, weaken and in some cases destroy unions, but it requires people inside unions to use those weapons or there have to be people inside the union who will let themselves be used by somebody who wants to use those weapons against their union.'

"Are you referring to Mr. Morrissey there?

"A I am referring to all the characters that were in the union that were out to do a job on the union using

gtrlla

the Landrum-Griffin Act. It's Griffin, not Griffith.

"Q Do you include Mr. Morrissey in that group?

"A Yes.

"Q You go on to say, 'Therefore, in considering"--

THE COURT: I don't think there is any answer to that question and would suggest if you want to continue you go down to line 14.

MR. MC INERNEY: I'm sorry, your Honor. Line 14:

"Q Are you including Mr. Morrissey in that group?

"A Yes.

"Q You go on to say, 'Our only purpose is to indicate the kind of people who get involved in this kind of situation.'

"Is Mr. Morrissey one of the kind?

"A Yes.

"Q What kind are you referring to?

"A Men that go out of their way to harass and use every device to destroy the union, to prevent it from operating, harass its officers, bring false charges against officers, disrupt meetings, make it impossible to conduct the union's business, interfere with negotiations for new contracts.

gtr12a

"Q On the next page you go on to say, 'A dissident, in our book, is one who opposes for the sake of tearing down.'

"Are you saying Mr. Morrissey opposes for the sake of tearing down?

"A Yes.

"Q 'One who opposes for the benefit of someone or something other than the membership'?

"A Yes.

"Q Mr. Morrisey comes into that category?

"A Yes.

"Q 'That, we submit, is the kind of union man Landrum-Griffin was meant to protect. It was not meant to protect the membership of any union or to strengthen any union's ability to do its job of serving its members.'

"Are you saying Mr. Morrissey is bringing these suits for his own benefit and not for the benefit of the union? Do you suggest that Mr. Morrissey is that kind of a union man?

"A I made that speech.

"Q You are referring to Morrissey there?

"A I made that speech.

"Q I am asking you.

gtrl3a

"A I was not referring to Morrissey, I was referring to a group.

"Q Morrisey was in that group?

"A He could be. His activities could be.

"Q Did you say, Mr. Curran, 'With all dirty tactics they were using, the complainants and their battery of lawyers still found grounds on which to bring additional charges against the union'?

"A I remember saying what is in the book.

"Q What dirty tactics were you referring to?

"A Harassing, disrupting meetings, bringing false charges, refusing to allow officers to do their job, preventing people from doing their work, things like that.

"Q Mr. --

"A Starting fights in the hiring hall.

"Q Mr. Morrissey was one of the complainants you were referring to?

"A I don't remember.

"Q He was a complainant before the Department of Labor, was he not?

"A Yes, he was. That was in 1966 you are talking about now?

"Q I am talking about what you said in 1969.

gtr14a

"A 1966 was when he was a complainant, '66 or '69?

"Q In 1969 at this convention you said, 'One suit after another was filed in court against the union covering every phase of the operation of the union.'

"Is that right?

"A I have to read it. I don't want you to read anything into my mouth.

"(Document handed to the witness)

"A Yes."

THE COURT: Let the record reflect that the document is now Plaintiff's Exhibit 8 for identification.

MR. MC ENERNEY: "On page 27 did you say 'Among the actions was one aimed at the coverage of certain non-elected officials under the NMU officers pension plan?'

"A Yes.

"Q Was it Mr. Morrissey who brought that action?

"A Yes."

MR. MINA: Your Honor, at this point the question I have is, "Was it Mr. Morrissey who brought that action?" and the answer was listed here as no.

THE COURT: That's correct. But I showed the witness the original in which the answer was changed

to yes with the initials J.C.

MR. MINA: Fine.

THE COURT: Let the record reflect that.

I saw that coming and to avoid the disruption I showed it to the witness and he adopted it.

MR. MINA: The reason I bring it out is I don't think the correction was there on either of the copies.

THE COURT: It may not have been on yours, but what I will do, since I have the original, is I will be near the witness and will turn to him with the original transcript so he can make the correct answer.

If you at any point find some difference between his answers and what you have, if you wish to confer further with the Court, I will be more than happy to, but obviously we are all anxious that the jury have the questions and answers as finally determined.

I think you are down to line 24.

MR. MINA: Your Honor, I object to the reading of the next question on the grounds that it has no relevance to this lawsuit and will be severely prejudicial.

MR. BERGADANO: And the following questoin as well, your Honor.

THE COURT: One moment, let me look at them.

gtr16a

(Pause)

MR. MC INERNEY: I am not going to read the following question, your Honor, just the first question.

THE COURT: Then you are obviously withdrawing your objection.

MR. BERGADANO: I withdraw my objection.

MR. MC INERNEY: Your Honor, I might point out --

THE COURT: I am going to permit the reading of the one question. Mr. Mina, you have your exception.

BY MR. MC INERNEY:

"Q Did that action result in a judgment in favor of the union in the sum of $674,229.65?

"A Yes."

Your Honor, could I interrupt this reading now to ask the Court to instruct the jury that Mr. Curran is a hostile witness?

THE COURT: Let me suggest this:

In the context of this lawsuit, ladies and gentlemen, Mr. Curran is an adverse party from Mr. Morrissey. His deposit?ion was being conducted by Mr. Morrissey's attorney, therefore, Mr. Morrissey's attorney was permitted to examine Mr. Curran as though he were under cross-examination here at the trial, that

gtr17a

is, he could lead him and he could ask him questions just as if he were conducting cross-examination. That is the usual course when in pretrial deposition you are examining the other side in the lawsuit.

The same situation would prevail in the event the defendants here were taking the deposition of Mr. Morrissey.

MR. MC INERNEY: Thank you, your Honor.

This is reading from page 12, line 6:

"Q You went on on page 32, Mr. Curran, and you said, 'Then there were the communists. There could not have been any more organized, more ruthless, better trained enemy than the communists. They got a powerful hold on the union in the early years. When we moved to break that hold, they fought like tigers to hold it with their orders and their support coming from the National Communist Party and the Kremlin itself.'"

MR. MINA: Your Honor, at this point, in regard to this whole line, I would again object because the time period, again, referred to is some five years before the arrest, which is the subject of this lawsuit.

THE COURT: Very well, overruled.

MR. MC INERNEY: Continuing the quote:

"'We defeated them after a tremendous

gtr18a

battle and then we had to splinter group hacks and the hangers on tried to move in and tried to take their place.

"'In many ways, the Curran compaign is a continuation of the earlier attacks on the NMU.'

"Which Curran campaign were you referring to; Mr. Morrissey's campaign?

"A I was referring to the dissident campaign. There was a group of them.

"Q Was Mr. Morrisey one of the dissidents you were referring to?

"A Yes.

"Q 'We said at one of our conventions back in the early days that as long as the NMU kept moving forward we were going to have enemies, someone was going to try to stop us or destroy our influence. That has proven true over the years.'

"Was Mr. Morrissey one of the groups you were referring to there?

"A Yes.

"Q Continuing, 'In the case of the mariners and the five pointers, it was shipowners who backed the attacks. The communists, of course, were out to use the union for the Kremlin's purposes. There have been

gtr19a

others, politicians, gangsters, corrupt lawyers, opportunists of every description have at one time or another tried to get their hooks into the NMU or to damage the union in some way and, of course, there is a hostile union group which feels any problems for NMU are good for them.'

"Are you referring to Morrissey's group when you talk about the hostile union group?

"A There were several groups.

"Q Was Morrissey's group one of them?

"A Yes, he and his wife, his Trotskyite's wife is one of them.

"Q You go on to say, 'Any of these groups may be involved in the present opposition.'

"When you talk about the present opposition, was Mr. Morrissey one of hte present opposition or Mr. Morrissey and his wife?

"A Yes. Morrissey's wife was not a member of the union, she was a member of the teachers union.

"Q Morrissey himself was one of the present opposition, is that correct?

"A Yes.

"Q 'The problem is a combination of several things. We know the official communist party

publications, formerly the Daily Worker, now the Daily World, said in its August 16, 1969 issue in an article blasting the president of the NMU that "Communist seamen and communist sympathizers have been part of the opposition."

"'The article went on to talk about the "Potential force of this anti-Curran opposition."'

"Was Mr. Morrissey included in that anti-Curran coalition that you were referring to there?

"A I think his was a separate group.

"Q Continuing quote, 'We also had statements in the propaganda of the so-called dissidents indicating they are working for insurance interests, anxious to get hold of the NMU pension plan reserves.'

"Was Mr. Morrissey one of the dissidents you were referring to there?

"A I don't know.

"Q Further on --"

THE COURT: Go down now, if you would, you will note there is no answer to any question short of the question asked on line 23.

MR. MC INERNEY: Yes, your Honor.

Beginning on line 23:

"Q Was Mr. Morrissey one of the dissidents you

gtr21a

were referring to there?

"A Yes.

"Q You go on to say, 'In our past battles, tough and ruthless" --

THE COURT: You are skipping now because the question was never finished.

BY MR. MC INERNEY:

"Q -- as our opponents might be, there was a point where they had to accept the decision of the membership in an election or referendum or convention, the issues would come to a head, the membership would take its stand and that was it.'

"Continuing the quote, 'This time we have been through many such showdowns. The election was the key testimony, of course, the referendum on non-officer pension was another. The ratification of the deep sea contract was also made a test by these people.'

"When you say, 'these people,' are you referring to Morrissey?

"A I was referring to the dissidents.

"Q Is Morrissey one of the dissidents you were referring to?

"A He could have been."

Skipping down to line 18 on page 17, your

gtr22a

Honor:

"Q Is the Pilot the official publication of the union?

"A Yes."

Skipping to page 18, line 3, your Honor.

"Q What is the Pilot?

"A It's a house organ of the National Maritime Union."

Skipping to line 8:

"Q Does the editorial board of the Pilot consist of the national office?

"A Yes.

"Q What is the national office of the NMU?

"A It consists of the president, secretary-treasurer.

"What year's constitution have you got?

"Q Well, I have in my hand October 1972, but this particular provision of the constitution has not been changed, Mr. Curran."

MR. MINA: Objection.

THE COURT: Yes. I think that you ought to add at this point your comment, Mr. McInerney, on line 2[illegible].

MR. MC INERNEY: Line 20 of that page, yes, sir.

THE COURT: Page 18.

MR. MC INERNEY: "Has not been changed, Mr. Curran, between the years 1969 to 1972.

"A It consisted of a president, a secretary and six vice-presidents.

"Q The editor of the Pilot is apointed by the National Office, is that correct, Mr. Curran?

"A Yes.

"Q Were you the author from time to time of an article which appeared in the Pilot called 'Passing'" --

THE COURT: Wait, wait, because I have looked at the page and I do not see the answer.

MR. MC INERNEY: The answer is on page 20, line 8, your Honor.

THE COURT: I see it now. Go ahead.

BY MR. MC INERNEY:

"Q Were you the author from time to time of an article which appeared in the Pilot called 'Passing the Word'?

"A Yes."

Mark that for identification, please.

(Plaintiff's Exhibit No. 9 was marked for identification)

MR. MINA: Your Honor, obviously there is an

gtr24a

objection to this. It is dated July-August 1971, which followed the arrest in this case.

THE COURT: I will hear counsel at the side bar.

I noticed something in the transcript to the same effect.

I think it would be conceded by you that this would have been published after July 1 at least, is that right, Mr. McInerney?

MR. MC INERNEY: Yes.

(At the side bar)

MR. MC INERNEY: Judge, on the issue of malice, your Honor, I don't think that there is anything -- I don't think there is any time limitations backwards or forwards.

Certainly if right after the arrest and discharge and somebody called somebody whatever they called him, I think that would be admissible.

THE COURT: Let us first, before we grapple with that legal issue, see factually what you are pointing to.

MR. MC INERNEY: It is all in passing the word.

THE COURT: Here is the exhibit. I have it

gtr25a

in front of me.

MR. MC INERNEY: It begins here where I have it checked, your Honor.

THE COURT: Let me look at it.

I am looking at Plaintiff's Exhibit 9 for identification, page 4, an article called "Passing the Word."

(Pause)

THE COURT: Number one, this does seem to be cumulative to the very substantial amount of evidence you have now placed before the jury about Mr. Curran's feelings toward the plaintiff prior to the arrest.

Now you come in with similar material published, I would suggest, immediately after the arrest. There is no mention in the article of Mr. Morrissey as an individual, I recognize that.

I think we have, first of all, a legal issue.

You say that on the issue of malice you can establish that my statements or acts both before and after the event in question.

Do you have any cases to support that proposition?

MR. MC INERNEY: They are in my brief. I gave you -- I think that was reported to you in my

gtr26a

memorandum on the corpus juris secundum.

THE COURT: Here is a copy of your trial brief if you could just point out to the Court where the authority is and then I will ask the other side to address themselves to your argument (handing).

MR. MC INERNEY: This is what I was referring to, your Honor, on page 10 of the trial brief.

THE COURT: All right.

(Pause)

THE COURT: Is there anything else that you wish to point to?

MR. MC INERNEY: Well, I don't have anything in the brief, your Honor, but I'm sure there is plenty of authority on it. I have to look it up. I didn't anticipate this because it is a question forward and backward. Unless there is a change -- if somebody could show there was a reconciliation inthe interim, that would be a different story.

THE COURT: All right. Let me hear from Mr. Mina.

MR. MINA: Your Honor, on this basis we object to anything relating to any time period after the arrest.

The basis for this cause of action is on the grounds of malicious prosecution resulting in the arrest

gtr27a

of Mr. Morrissey on July 1, 1971. If that maliciousness did exist, it had to exist before the arrest and be the reason for the arrest. Anything following that event has absolutely no relevancy to the cause of action that the plaintiff is suing for.

THE COURT: Unless it was in the nature of an admission against interest where Mr. Curran, for example, would have said to somebody, "Well, I had that no-good Morrissey arrested because I hated his guts," or something like that.

It would seem to me an admission such as that against the interest of the declarant would be admissible.

I have some difficulty in agreeing with plaintiff's counsel that this after published material in the Pilot is admissible to show that there was malice at the time in question, which was July 1st.

We are conceding for the purpose of this argument that this July-August 1971 publication was published after the event in question. We are not talking about liable, we are talking about a malicious prosecution.

I would suggest in this the plaintiff can show that this publication was prepared and went to te printers befoer July 1st. It should not be permitted

gtr28a

in evidence.

Also, I would add that the material which I have read from the publication is essentially cumulative in nature.

MR. MC INERNEY: Yes, your Honor, but the more he says it, it shows --

THE COURT: How many times does he haveto say it if he says it after the event as before?

MR. MC INERNEY: The more he shows it shows a continuous state of mind and it never changed. If they are going to show any evidence to the contrary, I will --

MR. MINA: Again at this point we will make a point I think we made twice at the side bar and that certainly was made to the jury on opening:

Mr. McInerney is now, it seems, adding and adding and adding to a record to show that there was no love lost between Mr. Curran and Mr. Morrissey.

We have already admitted that and I think it really is an imposition on the jury and the Court's time to keep doing this.

THE COURT: I would suggest that there are a number of reasons which prompt me to sustain your objection.

I will exclude the exhibit, unless you can

gtr29a

demonstrate that this was written on or before July 20, 1971.

MR. MC INERNEY: Your Honor, with Mr. Curran in Florida, it is Curran's handwriting, I mean, Curran's writing, it is very difficult -- and I thought our agreement in the robing room was that the whole deposition was going in without any of these objections.

THE COURT: Oh, no.

MR. MC INERNEY: All right. That's what I thought. I myself understood it.

THE COURT: You misstated it. Certainly it seems to me if they reserved their right to objections, they had a right to make them here.

MR. MC INERNEY: Yes, your Honor.

THE COURT: I use the date July 20, 1971 because there are three basic acts of malice.

MR. MC INERNEY: Yes, your Honor.

THE COURT: On July 1 when he was arrested, on July 15, when he was arraigned and on July 20 when the hearing was conducted.

MR. MC INERNEY: Your Honor, on the malice, I wouldn't think we would be limited that severely, because certainly malice doesn't bloom up and happen on the exact time of the event itself.

gtr30a

THE COURT: No. I have given you ever right in the world to give background, I went back several years up to the events in question. But now unless you can satisfy me that this allegely malicious statement was made on or about July 20, 1971, I will exclude it.

MR. MC INERNEY: I might say this to your Honor, that it so happens in this case I do have evidence that goes back, but there might be many cases where somebody might say afterwards, as your Honor I understand said, that they were responsible for it they are sorry that they did this, whatever it was got away.

But I might also just say, "I'm sorry he got away," they don't have to say they were responsible for the act, and I would say that that is malice.

THE COURT: I would suggest this:

I have again read the paragraph to which you refer. There is no reference at all in here to Mr. Morrissey and there has been nothing presented to me up to this point which would cause me to conclude that the item was written prior to July 20, 1971.

If you can demonstrate that, I would permit it to go in.

MR. MC INERNEY: Writtenor published? It must have been written prior to it.

gtr3la

THE COURT: You don't have it at the moment. If you can come up with it in the record somewhere, I will permit you to introduce it.

MR. MC INERNEY: I don't have that, no.

THE COURT: Under the circumstances, the objection is sustained.

MR. BERGADANO: Your Honor, I don't know if this is the appropriate time and if it is not I will raise it at such time as your Honor believes it is appropriate.

We are getting into the area of malice. There is always in this kind of thing, speaking for my clients, the jury may carry over in its mind that malice of any member of the union can be carried over to every other individual.

I don't know if your Honor thinks it appropriate or certainly when your Honor does, I think that point should sharply be brought home to the jury, because we are charged individually with malice. The unions may be imputed, but not the individuals.

THE COURT: I will keep that in mind.

MR. BERGADANO: I am deeply concerned that there may be a carryover.

THE COURT: I recognize you have a problem

with the spillover. At the same time, I recognize each man has to try his case the way he sees fit and when one wants to try his case subject to connection, I am faced with that. I am faced with that in conspiracy cases very frequently and here, too.

Basically, all of this evidence is being offered subject to connection.

MR. BERGADANO: That was my real concern, because subject to connection, we will get tarred with the brush without even getting a chance to defend ourselves.

THE COURT: All right.

(In open court)

THE COURT: Ladies and gentlemen, you have been listening to testimony and will undoubtedly listen to more testimony which is being presented by the plaintiff to support his allegations of malice.

I would suggest that this testimony is being offered subject to connection to the various individual defendants. Until such time as the testimony and the evidence connects up the various defendants to the acts charged here, it should not be taken as evidence against a particular defendant.

You note there are a number of people named. You note, also, that I have indicated that certain

gtr33a

evidence may at this point be admitted against the union, but relative to others who have not admitted the testimony against it will be up to the plaintiff to connect those defendants up with the arrest and prosecution of Mr. Morrissey.

In the event he is unable to connect one or more of the individuals up to the arrest and prosecution of Mr. Morrissey, the testimony you are hearing now should not be considered in any way against the unconnected defendant.

I will instruct you further as the trial progresses.

You may proceed, Mr. McInerney.

MR. MC INERNEY: Skipping to page 26, your Honor, line 3:

"Q Mr. Curran, do you recall being deposed in the action entitled "Morrissey, et al. vs. Curran, et al," which was 69 Civ. 442 by me at the union hall on Wednesday, November 18, 1970?"

MR. MINA: Objection, totally irrelevant.

Again, your Honor, we are referring to the action of Morrissey against the National Maritime Union on which a final decision was not rendered until 1972, the year after the arrest.

gtr34a

THE COURT: I will sustain the objection.

MR. MC INERNEY: Your Honor, may I be heard on that?

This is a deposition that was taken November 18, 1970, and I call your Honor's attention to line 24.

THE COURT: Where is the definitive answer to the question?

MR. MC INERNEY: On page 27, lines 6 and 7.

THE COURT: The objection is sustained.

Next question.

MR. MC INERNEY: Your Honor, you follow that down on page 27, I don't know where I can begin.

On page 27, line 12 or 13, is that all right?

THE COURT: Yes, line 13 is all right.

MR. MC INERNEY: But it refers back to the question I asked him about what he answered on his deposition in November 1970, which was only a few months before this incident.

MR. MINA: Your Honor, I respectfully refer the Court in regard to that to line 18, where the question is finally answered.

THE COURT: Yes, I will permit the answer with the addition by Mr. Gruber, I will permit your second question, I will permit the answer. I think that gives

gtr35a

it to the jury as complete as you can.

MR. MC INERNEY: All right, your Honor. I don't usually read the colloquy of counsel, your Honor.

THE COURT: It is an addition to the question and I will permit it.

So begin on line 113. I think you are covering the matter completely at that point.

MR. MC INERNEY: All right.

"Q Did you feel the same way in July of 1971 about Mr. Morrissey that you felt in November of 1970, Mr. Curran?

"Mr. Gruber: Did he feel he was a slob?

"Q Did you have the same feeling about him?

"A I don't know what feeling I had about him at that time.

"Q Did anything happen --

"A If any."

THE COURT: I don't see an answer to that, "Did anything happen?" question.

MR. MC INERNEY: He said if any. That is an interjection.

THE COURT: I see.

MR. MC INERNEY: Page 29, your Honor.

Mark this for identification, please.

gtr36a

(Plaintiff's Exhibit No. 10 was marked for identification)

MR. MINA: Your Honor, there is an objection to this.

Again, we are getting into an area, and I don't mean to be redundant, but I feel to protect my clients I have to keep making the objection, we are getting into a very, very cumulative area now.

Mr. McInerney continues to attempt to show that Mr. Curran and Mr. Morrissey did not get along. We admitted that when we started the trial and I think it really is reaching a point where we are doing nothing but taking up the Court and the jury's time with this.

THE COURT: Let me see the proferred offer.

It seems to me if there is an issue as to whether or not they got along, it is conceded that they did not.

I will go further. It seems to the Court that it is conceded that they did not like each other.

All right. I am looking at Plaintiff's Exhibit 10 for identification.

What page do you want to refer the Court to, counsel?

MR. MC INERNEY: I am asking him about the

reproduction of his speech on page 31, your Honor.

THE COURT: Let me turn to page 31.

Is there any reference in there to Mr. Morrissey? I don't see it.

MR. MC INERNEY: Not by name, your Honor.

MR. MINA: Your Honor, I move to strike counsel's remark.

THE COURT: The answer is no, ladies and gentlemen.

Did you cover this in the deposition, counsel?

MR. MC INERNEY: Yes, your Honor, page 31.

Wait, your Honor, I just asked him whether it was his report and relied on that.

Then I go on to the next one, the August 1969 issue.

THE COURT: Are you going to take every issue of the magazine from July 1969 to June or July-August 1971? Is that what you propose to give to the jury?

MR. MC INERNEY: Only the ones that refer to the dissidents, and particularly Mr. Morrissey, your Honor.

THE COURT: Can't we have a stipulation to save the time of the jury?

gtr38a

It seems to me, gentlemen, if we are going to sit here and read every issue of the NMU Pilot, this one particularly contains 65 pages, to cover a matter that is not basically in dispute, it seems a waste of the jury's time.

I will direct counsel to take ten minutes now, see if you can get a stipulation on this particular matter so we need not occupy the jury's time with matters which are not in controversy.

The jury will take a ten-minute recess.

Ladies and gentlemen, please do not discuss the case among yourselves. Keep an open mind on all facets of the case until it has been concluded.

We will take a ten-minute recess.

(Recess)

(In open court in the absence of the jury)

THE COURT: Have counsel had an opportunity to confer on the matter which we were discussing just prior to the recess?

MR.MC INERNEY: Yes, your Honor.

THE COURT: What do you have to report, Mr. McInerney?

MR. MC INERNEY: I made an offer that the defendants, except for the defendants Freedman and Sovel,

gtr39a

concede the issue of malice. That was rejected and no counterproposal was made.

MR. MINA: Your Honor, at this time we would informthe Court that on behalf of our clients, we are certainly willing to stipulate that there were ill feelings between Mr. Curran and Mr. Morrissey, something that we have conceded to the jury since the beginning of this trial.

MR. MC INERNEY: Your Honor, there is nothing in this record that shows Morrissey had one whit of ill will towards Curran. But the record is replete up to this point with plenty the other way. As a matter of fact, the record is that Mr. Morrissey testified thathe was on Curran's team up to a point and resigned for personal reasons, and that's the only thing we have on Morrissey.

THE COURT: Let me suggest this:

It is obvious to the Court that you gentlemen are unable to come together on a mutually acceptable ground.

You, Mr. McInerney, issue a concession on the ultimate question; counsel for certain of the defendants is not prepared to go beyond something that is obviously already apparent to both the Court and the jury.

gtr40a

In view of the fact that you cannot reach a stipulation, I think that we should proceed t. present proof.

However, since this proof does overlap, in a manner of speaking, relative to other defendants here, in view of that I am going to suggest that you go forward, but that at this point you go forward to establish Mr. Curran's connection with the prosecution.

Needless to say, up until this point you have not done so.

You may do thatin one of two ways:

Either by altering your presentation to the jury, which I think would be appropriate, or by making a detailed offer of proof at this time to indicate to the Court outside of the presence of the jury what you expect to establish relative to the connection of Mr. Curran to the arrest, the arraignment and the ultimate prosecution of Mr. Morrissey.

MR. MC INERNEY: Your Honor, I have a police officer as a witness here, I can put him on; I have the district attorney, I can put him on; and I also have a former U. S. Attorney as a witness and I would like to proceed in that order and get the details of the arrest that we can.

gtr4la

I subpoenaed Mr. Nimmo at 10 o'clock this morning. I don't see him here.

I have an affidavit of service on a subpoena on Mr. Minno, your Honor. He was the master at arms who was there.

I have Mr. Snow's deposition. I could begin to read that.

But I would think the best thing to do, if you want, to get the police officer on and get the district attorney on, hear their stories.

THE COURT: I don't think you have answered the Court's question, however.

MR. MC INERNEY: Yes, your Honor.

In other words, you prefer to defer on that?

MR. MC INERNEY: No, I will just say this, your Honor.

Mr. Nimmo was the master at arms on the door. He made a complaint to the district attorney. It was not a full disclosure of the facts. He said Mr. Morrissey and others in the complaint were distributing literature within the union hall.

The police were called, Mr. Morrissey was singled out and arrested, taken up to Mr. Snow's office, as Mr. Morrissey told us. Snow told the police officer,

gtr42a

"Come into my room, I'm going to show you something in the book."

We have corroborating statements on that from Mr. Snow's deposition.

The police officers then, on the complaint of Nimmo, not acting on their own by any means, take Mr. Morrissey down to the precinct and go through the formalities of booking him.

I might say this, your Honor, this hasn't been disclosed to the jury, there was talk about a traffic ticket.

The penalty for the crime Mr. Morrissey was charged was 90 days in jail plus disorderly conduct. That was putting him in jeopardy of his freedom.

He was released from the precinct, thereafter he came down to the criminal court, the first charge was discharged on July 13, the second charge was dismissed on a demurrer to the complaint on July 20.

Now, I think we can do -- the fair implication is Nimmo, who was the master of arms, and Snow, who is chief of security, were working for the union, as was Mr. Curran.

I asked Mr. Curran in his depositoin later on whether or not he was aware of the charges

gtr43a

against Morrissey. I said, "Did you have to do anything to have the charges dismissed?"

Morrissey pays dues to the union and part of these dues go to payment of union counsel. Union counsel appear and they don't defend Morrissey, on the other hand, they file a brief to see if he can get him in jail. That is an unusual circumstance.

THE COURT: You are going to establish that this was some unusual circumstance?

MR. MC INERNEY: Yes.

THE COURT: How can you do that?

MR. MC INERNEY: I have to put an expert on. I think the Court can take judicial notice of it.

All right, your Honor. I have Mr. Fishman, a district attorney. He told me in his deposition that it happened once before when a union was fighting for the membership, but I will ask Mr. Fishman in his experience as a district attorney did he have an experience of having a union counsel try to have a union member prosecuted.

MR. BERGADANO: If your Honor please, the testimony on that by Mr. Sovel, when he was asked by Mr. McInerney, was that he gave a copy of that brief, which Mr. McInerney refers to, both to defense counsel for Mr. Morrissey as well as to the district attorney and

gtr44a

there is nothing whatsoever to show that the Court ever received it or looked at it.

THE COURT: I am not sure that that is going to be relevant here.

MR. BERGADANO: On top of which, your Honor, there is the implication which Mr. McInterney, I believe, is trying to create that where a lawyer is representing his client doing legal work, that there is something wrong with that.

Now, that, I think, your Honor, is a very prejudicial concept to get across to a jury insofar as my clients are concerned, and throughout Mr. McInerney's presentation we have the very thing that I have been concerned about from the beginning, the broad brush, "They did this, they did that," without any distinction among the defendants. He is lumping us all together.

THE COURT: Yes, I can see that. But at the same time it will be the Court's function to parse out from the facts the culpability or non-culpability as proved when the plaintiff rests his case. Needless to say, if he hasn't made a prima facie case against one of your clients, I will promptly act.

I would suggest, further, that we talked about the chilling effect in this court. It would seem to me

gtr45a

that if an attorney cannot practice his profession without fear of being prosecuted or sued for damages, there may be as much chilling effect there as in other areas which I have heard about.

The one thing that this Court feels most strongly about is the right of lawyers to argue causes without themselves, it seems to me, winding up as defendants when their function is a purely legal one. That is distinguished, for example, from Mr. Freedman's choosing to serve as a trustee.

MR. BERGADANO: That is entirely different, your Honor, I agree.

THE COURT: To take on that hat is another thing.

But if you are functioning as a lawyer, I would suggest I am going to have to see some case support for the position that one functioning as a lawyer is liable to a suit for malicious prosecution or anything that may flow from it.

I am not impressed by what has been presented to me so far by the plaintiff, nor am I sufficiently convinced by anything presented to me by the defendant to say that I have any firm views. I think there is an interesting question here and I think over the next day or

two we may reach the point where the Court will be prepared to answer the question.

In any event, I still haven't really heard an answer to my question from Mr. McInerney, but since he has indicated that he is prepared now to leave his presentation of the deposition because he has numerous witnesses who he has subpoenaed who are in court, I would suggest I will let him proceed to present the live testimony and then perhaps he will have laid a sufficient foundation for the Court to rule on the continued offers in the deposition.

Is that agreeable to you, Mr. McInerney?

MR. MC INERNEY: Yes, your Honor.

MR. SIFFERT: May it please the Court?

THE COURT: Yes, Mr. Siffert.

MR. SIFFERT: My name is John Siffert, I'm an assistant United States Attorney.

I appear here because a former employee of the United States Attorney's office, former chief of the civil division, Michael Hess, was subpoenaed and I would just like to make a statement before the jury is impaneled so there will be no need for a delay at a later time.

The subpoena calls for Mr. Hess to testify

gtr47a

pursuant to regulations in 28 CFR 16.21, et seq, which I will hand up to the Court (handing).

THE COURT: Give one to counsel who has served the subpoena.

MR. SIFFERT: I have also advised him of the provision.

In response to my request, an affidavit was served upon me which I will also hand up to the Court specifying the area of inquiry which counsel is interested in obtaining from Mr. Hess.

I forwarded that by Telex to Washington pursuant to the regulation and received a reply yesterday afternoon, which I will hand up to the Court (handing).

It provides that Mr. Hess does have permission to testify only as to matters set out in plaintiff's counsel's affidavit. Therefore, I would ask that the Court, in the questioning of Mr. Hess, permit me to object if counsel should go beyond the scope of his affidavit's request.

THE COURT: Very well.

MR. SIFFERT: Thank you, your Honor.

THE COURT: I would also note on the record, gentlemen, that the witness is my cousin.

If anyone wants to speak to that particular

gtr48a

matter, he may do so at this time.

Hearing no comments, I will assume that there is no objection by virtue of that fact.

MR. BERGADANO: If your Honor please, I am somewhat confused. Can we get an offer of proof on the plaintiff's part as to why he has subpoenaed and is calling this witness since he apparently had nothing whatsoever to do with the arrest of Mr. Morrissey or the subsequent prosecution which was by the district attorney's office of the County of New York, not by the federal government?

MR. MINA: I would join in the request.

THE COURT: Did you not receive a copy of this affidavit?

MR. BERGADANO: No, your Honor, I have received nothing. It comes as a complete surprise.

THE COURT: There are three matters here and let me read them to you, because that would be the subject of inquiry.

Reading in part from Mr. McInerney's affidavit, and I think you will recognize this as the relevant portion.

"In this connection I have served Mr. Hess with a subpoena for the purpose of having him testif-

gtr49a

with respect to three matters, to wit:

"1. The role Morrissey played as a complaining witness in the setting aside of the 1966 NMU election.

"2. The fact that the union took Mr. Morrissey's book and prevented him from participating in any union activities for a period of 18 months just previous to the time he was to run for national office in the NMU. Mr. Hess was instrumental in having Mr. Morrissey's book returned to him.

"3. Any conversation or conversations Mr. Hess may have had with Joseph Curran, Shannon J. Wall, Abraham E. Freedman or Charles Sovel with respect to Mr. Morrissey."

Those are the items that have been specified.

MR. MINA: Your Honor, on behalf of the defendants, we would object to Mr. Hess testifying to any of those as being totally irrelevant to this lawsuit.

THE COURT: Obviously three is relevant or could be relevant.

I don't know at this point what the conversation or conversations Mr. Hess may have had with Mr. Curran, Mr. Wall, Mr. Freedman or Mr. Sovel with respect to Mr. Morrissey and I don't know when he had them. I

gtr50a

think it is all going to depend on what he had and when he had it.

The other questions are really not able to be passed on by me because I don't know the nature and extent of the proffered testimony, but obviously if shortly before July 1, 1971, one of the defendants or more of the defendants acted to take Mr. Morrissey's book from him and acted in a fashion which was adverse to him, it seems to me that that will bear on the issue of malice.

I don't know. I have no dates here that I can turn to at I would suggest we are going to have to take the questions as they are asked.

MR. MC INERNEY: I can give your Honor the dates.

Mr. Morrissey testified to the dates, I think. His book was lifted in January of 1967 and it wasn't returned to him until 18 months thereafter, just before the 1969 election.

MR. MINA: We would then again renew our objection on the ground that that is totally irrelevant to this lawsuit.

MR. BERGADANO: On remoteness, that is more than four and a half years after the arrest in this

gtr5la

case.

THE COURT: I permit it. It was permitted to be asked and answered on Mr. Morrissey's direct examination.

I do see a note here in my own file notes indicating that in January 1967, the U. S. Attorney sued to compel a new election, that Mr. Morrissey's book was returned some 18 months later and the election was set aside by the Court.

I would permit an inquiry in that area. It is somewhat cumulative, but since Mr. Morrissey's credibility is at issue, I think it appropriate.

Let me suggest this:

I think there are at least some questions that could be properly asked of this witness within the ambit of the three overall areas which are set down in Mr. McInerney's affidavit. I would suggest you are free, as you know you will be, to object at any point if you feel that the testimony which is being elicited is irrelevant and immaterial or if the questions are objectionable as to form.

Is there any objection by any counsel on the separate and distinct ground that Mr. Hess is related to the Court?

gtr52a

MR. BERGADANO: No, your Honor.

MR. MINA: No, your Honor.

MR. MC INERNEY: No, your Honor.

THE COURT: Very well.

MR. BERGADANO: Your Honor, I assume those first two areas, the list that you read from that affidavit, relate to the union itself and perhaps the officers, it does not seem to relate at all to my clients.

THE COURT: I don't know. It would seem not, but at this point I can't tell.

MR. BERGADANO: Very well, your Honor.

THE COURT: The last area, of course, he does mention your clients' names.

MR. BERGADANO: Yes. He does mention my clients' names and there I am prepared for it.

MR. MC INERNEY: Since the jury is out there is one further thing and that is this:

I don't know if we are going to have some difficulty here.

One of the police officers who was the arresting officer of record -- he was not the arresting officer, there is going to be testimony on that, hewas just carrying out Mr. Nimmo's complaint, you see -- but

gtr53a

that particular officer has met with an automobile accident. I have had a supboena out and I found out through his precinct that he is now in, thathe had an automobile accident, he is in the hospital and I don't know whether we will be able to read his deposition or not.

THE COURT: I would suggest that I have been liberal relative to the deposition of others who are absent and it would seem to me that counsel would give serious consideration to your offer to read that deposition. If they have an objection, of course I will hear them.

MR. MC INERNEY: There is one problem. I sent the original and one copy to the police officer, it wasn't returned, I only have one copy, so I don't know how to handle that.

I take it I will have it sent out and have it Xeroxed and then read it.

THE COURT: Has it been signed?

MR. MC INERNEY: I don't believe so.

THE COURT: You can call the reporter, as I recall the rules.

Why don't you take that up at some appropriate juncture, such as the luncheon recess.

gtr54a

MR. MC INERNEY: All right, your Honor.

MR. BERGADANO: Your Honor, there were two police officers.

MR. MC INERNEY: I have one in court.

MR. BERGADANO: May I know which one you want to read the deposition?

MR. MC INERNEY: Tuciarone.

MR. BERGADANO: He was the arresting officer according to his testimony.

THE COURT: It appears from Mr. McInerney's statement that he was involved in an automobile accident and is in the hospital.

Would you be prepared on the representation by counsel which I just heard to permit the reading into the record of Mr. Tuciarone's deposition?

MR. BERGADANO: Your Honor, all I can say it is a coincidence, the first time we were scheduled to take this officer's testimony, he also had an automobile accident, but they managed to schedule the deposition for a short time later. Now that he is to testify live, I understand he has another automobile accident. He is either accident prone or we have unusual circumstances.

MR. MC INERNEY: That is exactly what I thought.

gtr55a

THE COURT: I am sure that the plaintiff would prefer to have the officer live.

Do you have any objection to the transcript or do you want to independently verify the representation made to the Court by your adversary?

MR. BERGADANO: I have no objection to the transcript, your Honor. I was present when officer Tuciarone was examined, so I am aware of his testimony.

MR. MINA: I have no objection, your Honor.

THE COURT: Very well. Then you can read officer Tuciarone's deposition, sir.

MR. MC INERNEY: Thank you, your Honor.

THE COURT: Are we ready to bring in the jury?

MR. MC INERNEY: Yes.

(Pause)

THE COURT: I would suggest you present the two witnesses in the order -- if you believe one is shorter than the other, take the shorter one first.

MR. MC INERNEY: I will put the district attorney on first. He asked about it.

THE COURT: All right, bring in the jury.

(Jury present)

THE COURT: Ladies and gentlemen, we have taken up a number of matters which went beyond the matter

gtr56a

in connection with which I originally recessed the court.

We are going to leave the reading of the transcript of Mr. Curran's deposition and Mr. McInerney has in court and wishes to call at least two live witnesses who will, I expect, testify before we recess for lunch.

We will leave the transcript of the deposition to the side. We will be coming back to that. And we will proceed to hear the testimony, as I understand it, of at least two witnesses who are present here.

Mr. McInerney.

MR. MC INERNEY: Plaintiff calls Mr. Fishman to the stand.

4/15/75
1-B

gtr1

C L I F F O R D S C O T T F I S H M A N , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC INERNEY:

Q By whom are you employed?

A I am an assistant district attorney in the New York County district attorney's office and my current assignment is that of the chief investigating assistant district attorney for the office of prosecution for the special narcotics part of the City of New York.

Q For how long have you -- were you so employed on July 1, 1971?

THE COURT: Were you employed as an assistant district attorney for the County of New York on July 1, 1971?

THE WITNESS: Yes, your Honor.

Q And for the entire month of July of 1971?

A Yes, I was.

Q Were you served with a subpoena to appear here today?

A Yes, sir, I was.

Q And after being served with that subpoena, did you contact my adversaries?

A No, sir, I did not.

Q Did you have any conversations with my adversaries between the time you were served with the subpoena and the time --

A No, sir, I did not, except perhaps to be introduced to some of the people in the courtroom when I arrived here this morning.

Q On July 13, 1971, were you working in the complaint room in the district attorney's office?

A As I recall, yes, sir.

Q And will you tell me, did there come a complainant by the name of Nimmo to your attention?

A If I might see a copy of the complaint, I can answer with certainty as to dates and names of people.

THE COURT: In other words, you don't have a clear recollection at this point and would like to see a document which might refresh your recollection?

THE WITNESS: Yes, your Honor.

THE COURT: Very well.

Do you have a copy of the complaint, which can be marked for identification?

MR. MC INERNEY: Yes.

(Plaintiff's Exhibit 11 was marked for identification)

gtr3 Fishman-direct

THE COURT: Counsel has handed you a copy of Plaintiff's Exhibit 11 for identification.

Does that document help you and does it refresh your recollection relative to certain events which occurred on July 13, 1971?

THE WITNESS: Yes, your Honor, it does.

Q Would you tell the Court and jury what happened on July 13 at the district attorney's office?

A I was assigned to the complaint room that day, which was the room in which cases are brought after an arrest has been made to draw up the complaint, the accusatory instrument, upon which a defendant is subsequently arraigned and prosecuted.

Recalling that I did, in fact, draw up or dictate the complaint in this case and looking at this document I can tell you that on that date Mr. James Nimmo made the arrest, police officer Gerald Tuciarone, came to the complaint room, as did hundreds of other complainants and/or police officers and that I did talk to Mr. Nimmo and I did dictate this complaint.

Q Do you have any recollection of anyone else being there?

A I have -- with regard to this case, sir?

Q Yes.

gtr4 Fishman-direct

A I have a vague recollection that there may have been another civilian with Mr. Nimmo.

Q And doyou know who that was?

A No.

MR. MINA: Your Honor, at this point, the answer, I believe, from the witness was there may have been and Mr. McInerney's question assumes that there was someone else.

THE COURT: We have no testimony at the moment that there was someone and certainly nothing to the effect that any identified or identifiable person was there.

At the moment the record reflects that the witness spoke with Mr. Nimmo and officer Tuciarone.

Q Was this an ordinary case?

MR. MINA: Objection.

THE COURT: Sustained.

Q Did anyone on that day, in connection with this complaint, express an opinion to you about the law of criminal trespass?

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

Q Well, what do you recall about that transaction?

A That it was one of probably 50 or 60 or 100 cases that I handled in the complaint room that day, that it was of a sufficiently unusual nature that I conferred with my superior briefly on our interoffice telephone about how to write the complaint and that I wrote the complaint and that either on that day or on a subsequent day my boss suggested that I follow the case and appear in the court the next time the case appeared.

I'm not positive if he suggested I do that, I seem to recall he requested that I do so.

Q You say it was of an unusual nature. Was it usual for you to follow the case?

A Occasionally an assistant would follow a case that he handled in the complaint room or at an early court stage. It might happen once in a great while, so to that extent it was unusual, but not unheard of.

Q Your superior that asked you to follow it, what was his name?

A Melvin Glass.

THE COURT: He was chief of the complaint bureau at that time, was he?

THE WITNESS: Either the complaint bureau or the criminal court bureau. I believe it was the latter, your Honor, criminal court bureau. He is now a

judge in the Criminal Court of the City of New York.

Q Who was the complainant in this case?

A The individual complainant in this case was Mr. James Nimmo.

MR. MC INERNEY: Mark this for identification, please. I believe it is a criminal court record.

(Plaintiff's Exhibit No. 12 was marked for identification)

Q Mr. Fishman, I ask you if you can identify what Plaintiff's Exhibit 12 for identification is?

A Putting aside the top three sheets of paper, which appear to refer to literature concerning the National Maritime Union, the other pieces of paper are the criminal court complaint and the other papers which get filed with or added to a criminal court file as it progresses through the courts, and they all appear to refer to this particular case, which is Plaintiff's 11, the complaint which I dictated in the complaint room.

MR. MC INERNEY: I offer it in evidence.

MR. BERGADANO: May we see the documents, since the witness testified, your Honor, and stated that three of those papers are not part of the current court records, but something else.

gtr7 Fishman-direct

THE COURT: Is that correct, sir, are the first three pages not part of the criminal court file in the case?

THE WITNESS: Well, your Honor, I recall very vaguely, having read a proceeding in the criminal court on the 20th of July, that some of the literature that apparently was being distributed on July 1st at the union hall was handed up to Judge Ringel.

I don't recall whether I have ever seen that literature or not. It would presumably be these three pages which, therefore, may have been affixed to the court record.

THE COURT: Do any of the pages contain any marking with an exhibit number?

THE WITNESS: Yes.

THE COURT: Would that help refresh your recollection?

THE WITNESS: Yes. Thank you, your Honor.

Yes, there are, and these are a little difficult to read because they are copies of copies, but what appear to be notations, court's No. 1 and court's No. 2 and what, again, appear to be the initials W.R., which would be Judge Ringel's initials.

THE COURT: Is there a date?

gtr8 Fishman-direct

THE WITNESS: No, there isn't that I can make out, Judge.

THE COURT: Very well.

Will you show them to counsel, Mr. McInerney, what constitute Plaintiff's Exhibit 12.

MR. BERGADANO: Your Honor, may we have a conference for a moment on this and on this area? I think we can shorten certain things.

THE COURT: All right, certainly.

(At the side bar)

MR. BERGADANO: If your Honor please, when these minutes were presented at an examination before trial, none of these three items were marked.

This is what was marked. It was not brought to counsel's attention.

No. 2, before Judge Ringel, as I read the transcript of the proceedings, he decided the matter on a constitutional basis of freedom of speech.

It was admitted by the district attorney at that time that the literature was being passed out was not revolutionary or prone to cause a fight or subversive in any way and, therefore, as your Honor will see for yourself, Judge Ringel's decision was essentially on the question of First Amendment freedom of speech and

gtr9 Fishman-direct

not on any other ground. That isthe essential ground that he made his ruling on.

MR. MC INERNEY: I concede that. There is no doubt about that.

MR. BERGADANO: So these sheets are irrelevant.

THE COURT: Do you have any objection to the remainder of the exhibit, which appears to be a rather poor photostatic copy of criminal court papers?

MR. BERGADANO: Your Honor, I have two copies, one is dark and one is light. I could substitute if counsel is willing.

MR. MC INERNEY: I don't care what goes in, your Honor, I just want to prove that he was arrested and discharged.

MR. BERGADANO: I have the officer's affidavit, whatever it is called, and then I have a lighter copy, if it would be of benefit to the Court. These are rather dark copies, but I have a lighter copy.

THE COURT: What I want to ascertain now is whether there is any objection to the criminal court file, exclusive of the comments you made relative to the material itself?

MR. MC INERNEY: All those are, your Honor, is the papers he was passing out that day and the notice.

gtr10 Fishman-direct

THE COURT: Is there an objection to those?

MR. BERGADANO: No, other than the notice and the three things.

THE COURT: Those are exhibits in the case.

MR. MC INERNEY: They are exhibits in the case anyway.

THE COURT: But under the circumstances, I ask if you have, first, any objection to the underlying material?

MR. BERGADANO: No, your Honor, I do not.

MR. MINA: No, your Honor.

MR. BERGADANO: There are five pieces of paper. I don't know if we have this top one, which is the complaint itself.

THE COURT: We certainly should. If it is not here, we should have it. I will allow counsel to put things together.

MR. MC INERNEY: Let me see what it is, that's all.

That was the first exhibit that was offered.

MR. BERGADANO: You separated that from this?

MR. MC INERNEY: I didn't separate them.

THE COURT: The complaint appears to be here.

gtrll Fishman-direct

MR. BERGADANO: Then the officer's affidavit.

MR. MC INERNEY: Your Honor, that is the previous exhibit.

THE COURT: There is no objection to the court file.

Now let us turn to the matter of the three pages of exhibits.

I would be inclined to admit them.

First of all, the notice is already in.

MR. BERGADANO: Yes, sir.

THE COURT: That is the third page.

MR. MC INERNEY: I would like to have it shown that it was before the criminal court, that's all.

THE COURT: It does indicate from what the witness has said that this was an exhibit.

That takes care, really, the third of the three sheets. That is already in evidence.

MR. BERGADANO: Yes.

THE COURT: The first two sheets appear to be the document which the witness was handing out at the time and, frankly, I think that is relevant and material here and gives the jury a full picture.

If counsel wish to object to these two sheets, which, as I understand it, purport to be what the witness

was handing out, I will hear them, but I am inclined to let the sheets in.

MR. MINA: There is no objection.

MR. BERGADANO: On that basis, your Honor, I have no objection.

THE COURT: Then Plaintiff's Exhibit 12 for identification will be received, no objection.

I suggest you get together for a moment and substitute, if you can, more readable pages.

MR. BERGADANO: Certainly, your Honor.

(In open court)

THE COURT: Mark Plaintiff's Exhibit 12 received, no objection.

(Plaintiff's Exhibit No. 12 was received in evidence)

MR. MC INERNEY: Your Honor, may I have the last question and answer read?

THE COURT: Yes.

(Record read)

DIRECT EXAMINATION CONTINUED

BY MR. MC INERNEY:

Q You see in the complaint that Morrissey and others were passing out literature in the hall, do you not, Mr. Fishman?

gtr13 Fishman-direct

A Yes.

Q Did you ask either of the complaining witnesses, either the police officer or Mr. Nimmo, what happened to the others?

A I don't recall whether I did or not.

Q Do you have any specific recollection of any conversation that took place in the complaint room?

A I have what can perhaps be described as a past recollection recorded that Mr. Nimmo told me, in substance, what is placed on the complaint, because the complaint was dictated by me as a result of my conversations with Mr. Nimmo and with officer Tuciarone.

I have a vague recollection that I had a discussion either with Mr. Nimmo or with the other civilian who was there, if there was another civilian there, about some aspects of this case or of this arrest or of this incident.

Q Did anyone tell you that there was an overhang outside the union hall?

A I recall being told that. Whether it was in the complaint room on the 13th of July or on July 20th before we went to the court before Judge Ringel I'm not sure, but one of the points that was told to me by someone from the union, not the officer, but someone from the

union, was that while union regulations prohibited distributing literature inside the union hall, there was an overhang outside the doorway, an overhang over the sidewalk, and that people were permitted to distribute literature outside the building but under the overhang and, therefore, would not get rained on if it rained.

That's what I recall.

Q Well,was it raining?

MR. MINA: Objection, your Honor.

THE COURT: Let us find out if the witness remembers whether it was raining or not.

I think it is a ridiculous question. If you want to withdraw it you can.

MR. MC INERNEY: I will withdraw the question.

THE COURT: Very well. Let's get on to the next question.

Q Do you recall anyone showing you the notice?

A What notice is that, sir?

Q The notice that is affixed to those papers.

A I think this is the first time I've ever seen it in court today.

I might have been shown it on July 20, but I don't recall being shown it on July 20.

Q When you drew that complaint, were you familiar

with the First Amendment of the Constitution of the United States?

A Somewhat, yes, sir.

Q Were you familiar with the Landrum-Griffin Act?

A Only to the extent that it was passed by congress and it was designed to correct some abuses that apparently had grown up involving labor unions.

Q Did there come a time during this case, and referring to People against Morrissey, that you had any conversations with anyone connected with the union?

MR. BERGADANO: Your Honor, he has testified he spoke with Mr. Nimmo, who was --

THE COURT: Other than Mr. Nimmo.

Q Other than Mr. Nimmo.

A I have a vague recollection that probably on July 20 I had a brief conversation with someone other than Mr. Nimmo who was a member of, affiliated with or represented the union.

THE COURT: Do you recall who that person was?

THE WITNESS: Only to this extent, your Honor, having read the minutes of the proceeding before Judge Ringel on July 20 I know there was a Mr. Sovel, S-o-v-e-l, present in court and he was an attorney and

that he was there to represent the union in some capacity, and piecing all of this together I presume I had a conversation with Mr. Sovel about the case.

THE COURT: Do you have a recollection one way or the other?

THE WITNESS: Not specifically of speaking to Mr. Sovel, no, sir.

THE COURT: Do you think you could identify Mr. Sovel if you saw him today?

THE WITNESS: I doubt it, your Honor.

Q Did there come a time -- well, what happened -- were you present in court on July 13, 1971?

A No, sir, I believe I was not.

THE COURT: That was the day you were working in the complaint room, as I recall it.

THE WITNESS: Correct, your Honor.

Q Did I understand your testimony to say that your superior asked you to follow the case?

A I think he did, yes, sir.

Q When did he ask you to do that?

A As best I can recall what happened in this case four years ago, when I called Mr. Glass up from the complaint room and told him that I had this case and that these were the facts and I would have to draw up

the complaint a bit differently than the way we would normally draw up a criminal court complaint, he agreed, "Draw it up the way you suggested it and keep track of the case for me."

I believe that was the extent of my conversation with him about the case.

Q In your experience as a district attorney, have you had occasion when a complaint comes into the complaint room to say to a complainant that there is no case here, why don't you drop it?

A Yes.

MR. MINA: Objection, your Honor.

THE COURT: He has answered the question. I will let it stand.

Q Did you make any suggestion like that to anybody here?

A I do not believe so, no.

Q There did come a time when you resumed with this case after July 13, did there not?

A That is correct.

Q When was that?

A The only time I can give any specific -- the only time I can recall is on July 20, when I appeared in court.

gtr18 Fishman-direct

Q Let me ask you this, Mr. Fishman:

MR. MC INERNEY: Mark this for identification, please.

(Plaintiff's Exhibit No. 13 was marked for identification)

Q Can you identify that document (handing)?

THE WITNESS: May I read it, your Honor?

THE COURT: Look at it and after you have studied it tell us if you can identify it.

(Pause)

A I recognize this document as being a copy of something I was shown when I appeared at an examination before trial in this case last year.

It appears to be a transcript of the minutes of the arraignment of the defendant on the complaint that I drew before Justice Peter McQuillan, then of the criminal court, now of the Supreme Court of the State of New York.

THE COURT: You were not present at the arraignment, as I understand it?

THE WITNESS: That's correct,your Honor.

THE COURT: Very well.

MR. MC INERNEY: Your Honor, I offer those in evidence.

gtr19 Fishman-direct

THE COURT: Pick the document up, take it back to your adversaries and let's hear if they have an objection.

MR. MC INERNEY: Excuse me, your Honor.

MR. MINA: No objection, your Honor.

MR. BERGADANO: No objection, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit No. 13 was received in evidence)

MR. MC INERNEY: Mark this for identification, please.

(Plaintiff's Exhibit No. 14 was marked for identification)

Q Mr. Fishman, can you tell us what that document is?

THE COURT: That is Plaintiff's Exhibit 14 for identification, is that right, counsel?

MR. MC INERNEY: Yes, Plaintiff's Exhibit 14 for identification.

A The first page appears to be the arrest report which was filled out by officer Tuciarone relating to this arrest, and the second page appears to be the complaint report, which is a police department form, also filled out by officer Tuciarone.

gtr20 Fishman-direct

I believe the second page was filled out by officer Tuciarone.

THE COURT: Were they filled out in your presence?

THE WITNESS: No, sir.

MR. MC INERNEY: I offer it in evidence.

MR. BERGADANO: No objection, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit No. 14 was received in evidence)

Q On July 20, 1971, you appeared before Judge Ringel in connection with this case, did you not?

A I get the date July 20 only from looking at Plaintiff's Exhibit 12 and of previously received copies of the minutes of that proceeding. But, yes, I did appear before July 20 before Judge Ringel on this case.

MR. MC INERNEY: Mark this for identification, please.

(Plaintiff's Exhibit No. 15 was marked for identification)

Q Can you tell us what that document is?

A It appears to be a Xerox copy of a memorandum of law apparently submitted on behalf of the union in this case, in the case of People of the State of New York

against James Morrissey.

THE COURT: On what date, if you know?

THE WITNESS: I don't know,your Honor.

The case appared on July 20. That would be my expectation of the date, but I don't recall seeing it on that date.

THE COURT: Do you have a recollection of having received a copy of this document at some point?

THE WITNESS: No, your Honor, I don't. I might have received it, but I don't recall it.

THE COURT: Looking at it, does that refresh your recollection as to whether or not you received a copy of it?

THE WITNESS: Your Honor, on July 20, 1971, I was familiar with the facts of this case and I see those facts recited to some extent in the memorandum of law, but I don't recall whether I saw this document on July 20 or before July 20, 1971. I just don't recall.

THE COURT: There is no indication on any portion of it that you received a copy, such as an endorsement or copy received?

THE WITNESS: That is correct, your Honor.

Q Do you know whether or not a copy of that brief or the original of that brief was filed with the

court?

A If I re-read the proceedings before Judge Ringel, I might glean from that whether or not Judge Ringel specifically had seen this.

MR. MC INERNEY: My office is looking for a copy, your Honor. Maybe the defendants have a copy available.

A I have a copy if that helps.

Q You do have a copy?

A Yes.

THE WITNESS: May I?

THE COURT: Yes. We will have to mark it for identification.

MR. MC INERNEY: I will return a copy tomorrow, your Honor. I am terribly sorry, it is somehow or other out of order with all these papers.

THE COURT: Whatever you look at take it aside from the papers, we will mark it for identification and then later on counsel will see to it that whatever you leave with us will be returned.

This is Plaintiff's 16 for identification.

THE WITNESS: It may take a while, your Honor. It is 80 pages. I will skim through it as quickly as I can.

gtr23 Fishman-direct

THE COURT: All right. That is Plaintiff's Exhibit 16 for identification. That is a transcript of proceeding on July 20, 1971.

THE WITNESS: It is 31 pages, your Honor, not 80.

(Plaintiff's Exhibit No. 16 was marked for identification)

(Pause)

A I don't see anything in the minutes of proceeding before Judge Ringel, which is 31 pages, that indicates he received a copy of this, which is Plaintiff's Exhibit 15.

THE COURT: Is it your testimony, therefore, that up to this point you have no recollection that that particular document or a copy of it, Plaintiff's Exhibit 15 for identification, was presented to Judge Ringel?

THE WITNESS: I don't specifically recall it being presented to him, no, your Honor. It may have been. I don't recall it.

Q And you have no recollection of having received it yourself?

A No, I don't, except, as I say, I was familiar with the facts of the case from speaking to the witnesses

gtr24 Fishman-direct

and it is similar to what I see written down.

Q You say speaking to the witnesses.

Have you interviewed Mr. Sovel as a prospective witness?

A I probably spoke to Mr. Sovel on July 20. I don't recall speaking to him before that date, but I probably spoke to him on the 20th before I went to court in Judge Ringel's part.

MR. MINA: Your Honor, at this time I would move to strike the answer as not responsive to the question.

The question, I believe, from Mr. McInerney is, did he speak to Mr. Sovel for the purposes of using him as a witness?

THE COURT: I think the question is sufficiently responsive for me to let it stand and leave it to the jury.

It is not the clearest and the most definitive answer, but at the same time I will let it stand.

Q Mr. Fishman, do you recall being deposed in my office?

I will give you a copy.

MR. MC INERNEY: Mark that for identification,

gtr25 Fishman-direct

please.

THE COURT: You are covering the same subject now where he has been unable to recall if he did, in fact, speak to Mr. Sovel?

It is for the purpose of refreshing his recollection --

MR. MC INERNEY: That's all, your Honor. I am not trying to -- no, I am not claiming this is a hostile witness.

MR. BERGADANO: That was going to be my question, if he was trying to impeach his witness.

MR. MC INERNEY: No, no.

Mrs. Krueger, hand the transcript to the witness. It is Plaintiff's Exhibit 17 for identification.

MR. MC INERNEY: It is not for the purpose of speaking to Mr. Sovel, it is on the previous question of the brief.

MR. BERGADANO: Your Honor, Mr. Sovel?

THE COURT: There is no evidence in my recollection that the witness has identified the gentleman he was speaking to clearly. He has indicated certain things. I am going to let the jury's recollection govern on this.

The jury will disregard any colloquy of

gtr26 Fishman-direct

counsel.

MR. BERGADANO: Your Honor, if I may, rather than have Mr. McInerney read any portion of it --

MR. MC INERNEY: I am not going to read any portion of it, I am calling his attention to a question on a page and line and I am going to ask him if that particular question refreshes his recollection.

THE COURT: This apparently has to do with the brief.

MR. BERGADANO: Yes, sir.

THE COURT: He did indicate a certain inability to recall on that subject, therefore, I consider his recollection to have been exhausted and I will permit the witness to be shown Plaintiff's Exhibit 17 for identification in an effort to refresh his recollection.

You may proceed, counsel.

MR. BERGADANO: Thank you, your Honor.

Q On page 38, the last question, and following on 39 and then the answer comes after the two objections on line 6 on page 39.

First the question on page 38 and then the answer on 39.

A The only question I see on page 38 is someone says, "Thank you, that solves the problem, I think."

gtr27 Fishman-direct

I see, the bottom of the page.

Q That last question on the bottom.

THE COURT: Speaking for the jury and myself, it doesn't solve our problem yet.

MR. MC INERNEY: Nor mine, either, your Honor.

A All right. I have looked at the materials on pages 38 and 39.

Could you read back the question or put the question to me again, please?

Q I am asking you, does that refresh your recollection about whether or not the brief was submitted to the Court or filed?

THE COURT: There are two questions there, I would suggest.

MR. BERGADANO: Yes, your Honor.

THE COURT: I think you might cover them separately.

Q Does that refresh your recollection as to whether or not the brief was filed?

A I'm sorry, it doesn't.

THE COURT: All right, it doesn't. Next question.

Q Did anyone urge you to argue against the

dismissal of the charges against Morrissey?

A Obviously yes. My oath of office, in a sense, required me to make a presentation, if I could, against the dismissal of the charges.

The complainants, Mr. Nimmo and apparently Mr. Sovel as well, who were there on the 20th, were anxious that the charges not be dismissed.

I discussed with them what the facts were and that's the best answer I can give, I think.

MR. BERGADANO: Your Honor, I must object to this witness' statement where he says complainants, since the only complaint before the Court in the evidence is that by Mr. Nimmo.

THE COURT: We will strike the words "the complainants."

MR. BERGADANO: And he mentioned Mr. Sovel. Because the only complainant before the Court, and which is in evidence here, is that which was signed by Mr. Nimmo.

THE COURT: That is correct.

I will strike the word "complainant."

Is it your testimony that you did, in fact, have a conversation with Mr. Nimmo and Mr. Sovel relative to the dismissal of the complaint before the complaint was

dismissed on July 20, 1971?

THE WITNESS: I know I spoke about the case with Mr. Nimmo. He was my main witness if we ever had a hearing in the case, and I am reasonably sure I spoke to whoever else was there from the union on that date.

Now, I know from the minutes of the proceeding before Judge Ringel that Mr. Sovel was there, so I conclude I had to have spoken to him, also, about the case, about what evidence I might present, about what arguments might be made by either side as to whether or no valid complaint had, in fact, been made out.

Q Did you ask anyone what literature Morrissey had been passing out on July 1, 1971, at the time of his arrest?

A I don't recall specifically asking anyone that.

I was aware of the fact that the nature of the literature was in no way an issue in the proceedings before Judge Ringel.

Q Before you got to Judge Ringel, did you know that?

A I knew it to this extent.

If the nature of the literature had been such as the literature itself might constitute a

crime, I'm sure someone would have made me aware of that. If it preached the violent overthrow of the United States or racial bigotry or something else like that, I'm sure someone would have called it to my attention. So to that extent I knew the literature itself was not the nature of the complaint in terms of the criminal court action.

Q Did anyone tell you that the union hall was not a public place?

MR. MINA: I object to the form of the question.

THE COURT: Sustained.

Q What did you ask and what were you told about the union hall?

A What I asked and what I was told could best be discerned from reading the statement of fact that I made to Judge Ringel.

The recollection I had of it then when I spoke to Judge Ringel is much better than what I can recall now.

Q Would you care to read what you said and refresh your recollection and then tell the jury?

A I will be willing to.

THE WITNESS: Your Honor, it might be better what I said to Judge Ringel at the time.

gtr31 Fishman-direct

MR. MC INERNEY: I would object to that, your Honor.

THE COURT: Isn't that the best evidence of what he did at the time in question?

MR. MC INERNEY: But not --

THE COURT: If you want him to look at it and try to recall, fine.

MR. MC INERNEY: Not what he was told, your Honor.

That is his argument to the judge, but I want to know what he was told by the witnesses or by anybody else.

THE COURT: Did you have a conversation with anyone before you made a statement regarding the case to Judge Ringel?

THE WITNESS: Yes, your Honor, I did. I had a conversation with Mr. Nimmo and I believe also with Mr. Sovel.

THE COURT: And when was that?

THE WITNESS: In addition to the situation in the complaint room, that would have been on July 20, probably sometime before I appeared in Judge Ringel's court.

THE COURT: During the course of that conversa-

tion, could you tell us what Mr. Nimmo said, what Mr. Sovel said, if he said anything that you recall, and what you said?

THE WITNESS: I cannot single out what any of them or what I said specifically.

I know that they described to me something of the physical layout of the union hall, of union policy and practice about distributing literature, specifically about what happened on July 1st leading up to Mr. Morrissey's arrest and there may have been a discussion of other things as well. That's all that I can specifically recall.

I know I learned enough from them so that I could make a statement of fact on the record to Judge Ringel, a statement of fact which defense counsel for Mr. Morrissey did not object to, as to what the facts in this particular case were.

Q Can you tell us specifically what was said? You said about the facts leading up to the arrest. Did you ask the police officer what he observed?

A I know I spoke to the police officer on the 13th of July. I'm reasonably sure he was there on the 20th as well. I can tell you what I recall of our conversation.

Q All right, will you do that, please?

A From the material that I have read and looked at, the police officer told me, in effect, "I was told by my supervising officer to go down to the union hall and to tell the people there who were distributing literature against the union's request or demand or instructions that they either had to stop or I was going to have to place them under arrest, and I said this to these people and eitherthey didn't stop or Mr. Morrissey didn't stop," I don't recall specificallv what he told me about how many people were there, so I said to Mr. Morrissey, "I'm sorry, you're under arrest and I placed him under arrest."

Now, that is not word for word, that's substance.

Q What were the charges brought against Mr. Morrissey?

MR. BERGADANO: Your Honor, we have that.

THE COURT: Don't you have that in evidence already?

MR. MC INERNEY: All right.

Q What were the penalties on those charges?

MR. MINA: Objection.

MR. BERGADANO: Objection.

THE COURT: Yes, sustained.

Q Now, did either of the witnesses tell you that Morrissey was doing anything which made out the offense of disorderly conduct?

MR. MINA: Objection.

MR. BERGADANO: Objection, your Honor.

THE COURT: Sustained.

MR. MC INERNEY: I have nothing further of this witness.

CROSS-EXAMINATION

BY MR. MINA:

Q Mr. Fishman, I will try to make this very short for you.

Can you tell the jury from looking at that arraignment record about how long that arraignment took?

A Do you mean the transcript of the arraignment?

Q Yes.

A It's not in front of me right now, but from looking at it I would estimate two minutes, three minutes, something like that, four minutes.

Q And was it after that arraignment --

MR. MC INERNEY: Your Honor, I object to that estimate.

If he has any recollection, I will take his

gtr35 Fishman-cross

recollection, but the estimate --

THE COURT: He wasn't there.

MR. MC INERNEY: Oh, on the arraignment. Excuse me. Excuse me.

THE COURT: Why didn't you object in the first instance?

MR. MC INERNEY: Your Honor, I wasn't paying attention.

THE COURT:, All right. I am going to let it stand, but the jury can put whatever weight they want on the witness' answer.

The question related to an arraignment at which the witness was not present. He has given an estimate. It may be based on his other experience, maybe not. You can accept it or reject it as you see fit.

In any event, customarily arraignments are not lengthy proceedings, is that right?

THE WITNESS: That is correct, your Honor.

THE COURT: Next question.

Q You did appear before Judge Ringel on the 20th of July, is that correct?

A Yes, sir.

Q Could you tell the jury how long that

gtr36 Fishman-cross

proceeding took?

THE COURT: Approximately.

A Approximately 20 minutes, half an hour, something along those lines.

MR. MINA: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BERGADANO:

Q Mr. Fishman, you have before you the criminal court papers with the complaint?

A Do you want the police officer's report or the court papers?

Q First, if you will look, Mr. Fishman, at the affidavit signed by Mr. Nimmo with the charges above it.

A That is part of --

THE COURT: That is 12, I believe.

MR. BERGADANO: Yes.

Q I think in that group of papers it may be the last sheet of paper.

A I have it, sir.

Q Mr. Fishman, you dictated to a stenographer or someone and they typed up the typed portion, is that correct, sir?

A That is correct.

gtr37 Fishman-cross

Q And there was a change, was there not, up above where it said criminal test practices, second degree, and it was changed to third degree, is that right?

A That is correct.

Q And that was because of a change in the law, was it, sir?

A That is correct.

MR. MC INERNEY: I object to that, your Honor.

THE COURT: What is that?

MR. MC INERNEY: I object to that, your Honor.

THE COURT: It is in the record. He has answered it.

MR. MC INERNEY: I move to strike it, your Honor.

THE COURT: I will let it stand. The jury has heard it.

Q Mr. Fishman, as the assistant district attorney handling this matter in the complaint room, was ityou, sir, who decided what the charges were to be put against Mr. Morrissey based on the facts as related to you?

MR. MC INERNEY: I object to that, your Honor.

gtr38 Fishman-cross-redirect

THE COURT: Overruled.

A That's one of the primary functions of the assistant DA in the complaint room, yes, sir.

Q The complainants states the facts and the assistant district attorney decides whether those facts are sufficient to constitute a crime and if so, what the crime is in the complaint, is that correct, sir?

A Basically, yes, sir.

MR. BERGADANO: I have no further questions.

REDIRECT EXAMINATION

BY MR. MC INERNEY:

Q Well, now let's find out whether or not the fact that the union hall was a public place or a private place was given to you by Mr. Nimmo or anyone?

MR. MINA: Objection.

MR. BERGADANO: Objection, your Honor. It is outside cross-examination.

THE COURT: I will allow it anyway.

MR. MC INERNEY: He asked about --

THE COURT: All right.

MR. MC INERNEY: Thank you, your Honor.

A Can I have the question read back, please?

THE COURT: Who advised you whether or not -- let us have the question read specifically.

gtr39 Fishman-redirect

(Record read)

MR. MINA: Your Honor, I object only to the form of the question.

THE COURT: Sustained as to form.

You may inquire. The original objection was that it was beyond the scope of the cross-examination. I overrule that, but I do sustain an objection to the form.

Q Did anyone tell you whether or not -- were you told that the union hall was a public place?

A I don't recall specifically what I was told about the union hall, except that it was a building of, by and for the union and for members of the union and union activities.

Q Had you known it was a private place and that fact been disclosed to you, would you have charged this defendant with disorderly conduct?

MR. BERGADANO: Objection.

MR. MINA: Objection.

THE COURT: Sustained.

Q In bringing the charge of criminal trespass against Mr. Morrissey, was it disclosed to you that he was a dues-paying member of the union?

MR. MINA: Objection.

THE COURT: I will allow it.

A I know I knew that before my statement to Judge Ringel on July 20. I don't know for certain I was told that on July 13.

Q And did anyone call to your attention the First Amendment to the Constitution of the United States when you made that charge?

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

Q Did anybody call to your attention the Landrum-Griffin Act?

MR. MINA: Objection, your Honor.

MR. BERGADANO: Objection, your Honor.

THE COURT: Sustained.

MR. MC INERNEY: No further questions.

MR. MINA: I have no further questions, your Honor.

RECROSS EXAMINATION

BY MR. BERGADANO:

Q Mr. Fishman, you were aware on July 20 before the hearing was held in Judge Ringel's court that Mr. Morrissey was a dues-paying member of the union, is that correct?

A Yes, sir, and I believe I was aware of that

gtr41 Fishman-recross

on the 13th as well.

Q And with that knowledge and with the facts that you had, you sought to overcome the demurrer which had been filed against the complainant, is that right, sir? You argued against the dismissal?

A I argued as best I could against the dismissal.

Q With all of the facts, including the fact that Mr. Morrissey was a dues-paying member at the time that these events occurred which led to his arrest?

A Yes, sir.

Q Thank you, sir.

MR. BERGADANO: No further questions.

MR. MC INERNEY: May I have this witness explain what a demurrer is? He is an expert in the field.

THE COURT: Yes, the word was used.

MR. BERGADANO: No problem.

THE WITNESS: Yes.

Demurrer is out of use in New York criminal practice, but it basically is a statement by the defendant to the effect that, "I don't have to answer the complaint because the complaint does not make out a crime," and that is apparently what Judge Ringel decided,

there was no crime made out in the complaint.

MR. MC INERNEY: Thank you.

THE COURT: Thank you very much, sir.

(Witness excused)

MR. MC INERNEY: Your Honor, I am going to put Mr. Hess on.

MR. SIFFERT: Your Honor, may I be seated at counsel table here?

THE COURT: Mr. Siffert, you may.

M I C H A E L D. H E S S , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC INERNEY:

Q In the late 60's, were you an assistant United States Attorney, Mr. Hess?

A Yes, sir, I was.

Q And in connection with your duties as a United States Attorney, did you become acquainted with the plaintiff in this action, Mr. Morrissey?

A To be precise, I was an assistant United States Attorney in this district and I did become acquainted with Mr. Morrissey, I believe, in 1967.

gtr43 Hess-direct

Q Was that in connection with a contest of the 1966 NMU election?

MR. MINA: Objection, your Honor.

THE COURT: Sustained.

Q In what connection did you become associated with Mr. Morrissey or become familiar with Mr. Morrissey?

A At the end of December 1966 the Secretary of Labor, then Willard Wirtz, filed a lawsuit in this district through the United States Attorney's office against the National Maritime Union to upset the 1966 National Maritime Union election. Mr. Morrissey had been a complainant to the Secretary of Labor requesting that action by the Secretary of Labor.

Q And did Mr. Morrissey testify on behalf of the government as a witness?

MR. MINA: Objection, your Honor.

THE COURT: You are leading him.

MR. MC INERNEY: All right.

Q After your meeting Mr. Morrissey, what further connection did you have with him?

MR. MINA: Your Honor, at this time I must make the objection to Mr. Hess' testimony unless it in some way relates to the trial that we are here for now.

THE COURT: That is a very open ended

question that has been asked, but I am going to allow it.

A Mr. Morrissey, as a complainant to the Secretary of Labor, conferred with the attorneys for the Secretary of Labor, the U. S. Attorney's office, in 1967, and then eventually acted as a witness for the government in that action. That was a civil action.

Q Did there come a time that Mr. Morrissey made a separate complaint to you on his own?

MR. MINA: Objection.

THE COURT: You are leading him again.

MR. MC INERNEY: All right.

THE COURT: I think it is appropriate to make an inquiry, but the witness is certainly answering your questions and I would suggest that you should frame it properly.

Q Did you have any other business with Mr. Morrissey in 1967?

MR. MINA: Objection. Irrelevant.

THE COURT: I am going to allow it. Let's see what we can find out.

A During the course of the secretary's action regarding the election against the National Maritime Union, it came to my attention as an assistant U. S. Attorney that Mr. Morrissey's union book had been taken

from him and his union membership suspended and Mr. Morrissey requested that the United States Attorney's office here look into that matter, and his request was that we regain his union book for him from the union.

Q And did you take any action as a result of Mr. Morrissey's complaint?

MR. MINA: Your Honor, again, I must object. This has no relavance at all to this lawsuit.

MR. Morrissey has already testified that he didn't have that union book for about 18 months, the jury knows that already, and this really has no relevance to an arrest on July 1, 1971.

THE COURT: I think it is rather remote and I must suggest it is also cumulative. But since it has been introduced already in evidence and I don't see any strong reason to keep it out at this point, I am going to let the witness answer the question.

I gather, Mr. Morrissey requested the United States Attorney to use its best efforts to regain his book for him, is that correct, Mr. Hess?

THE WITNESS: That is correct, your Honor.

THE COURT: And did there come a time after the United States Attorney did certain things where Mr. Morrissey's book was, in fact, returned to him?

THE WITNESS: Yes, your Honor, that is what occurred, and the union gave Mr. Morrissey his union book back, as I recall.

Q Did you have any opposition in that connection?

A When you say opposition, my memory is not perfectly clear. As I recall, I made a motion before Judge Motley, who had been the judge sitting in the election case, to get the union book back. Up to that time negotiations between the United States Attorney's office and the National Maritime Union had not been fruitful. The union had not agreed to give the book back.

I then made a motion before Judge Motley to get the book back. My recollection is that the matter never was decided by Judge Motley because prior to either the argument of that motion or her decision the union did give Mr. Morrisey his book back.

That's my best recollection.

Q Have you had any conversations about Mr. Morrissey with either Mr. Curran, Mr. Wall, Mr. Freedman or Mr. Sovel?

MR. MINA: Objection, your Honor.

MR. BERGADANO: Objection.

gtr47 Hess-direct

Couldn't we at least have them one at a time and something about when?

THE COURT: Let me let the witness do this: Would you answer that question yes or no? That may be dispositive of the matter.

MR. BERGADANO: Fine.

THE COURT: If the answer is no, it is. If the answer is yes, then I will require an individual inquiry.

MR. BERGADANO: Thank you, your Honor.

THE COURT: Mr. Hess, I will have the question read back to you.

(Record read)

A Well, that's a very broad question.

During the course of the action by the Secretary of Labor against the union, Mr. Morrissey's name was certainly mentioned in conversations, so the answer is yes.

THE COURT: All right, fine.

Now let's take the next question, please, Mr. McInerney.

MR. MC INERNEY: Yes.

Q Were those conversations with Mr. Curran?

A I don't recall ever having a conversation with

Mr. Curran, except I was present at a deposition of Mr. Curran where the United States Attorneys, by myself and another Assistant United States Attorney named Arthur Olick, took Mr. Curran's deposition, and in the course of that deposition I think Mr. Morrissey's name was mentioned but that is the only recollection I have of being present with Mr. Curran where Mr. Morrissey's name might have been mentioned.

Q Do you have any recollection of what Mr. Curran said?

MR. MINA: Objection.

MR. BERGADANO: Objection.

THE COURT: No, I will allow the question. Yes or no, Mr. Hess?

THE WITNESS: I don't. I would think the deposition would speak for itself.

Q Did you ever have any conversation with Mr. Wall, Shannon J. Wall, concerning Mr. Morrissey?

A The same answer applies to Mr. Wall. I never had an independent conversation with him. We did take his deposition as well and that deposition was also present in that lawsuit filed by the Secretary of Labor.

Q And did you have any conversations with Mr. Freedman?

A With regard to Mr. Freedman, he was my adversary counsel, he represented the union in that election dispute. I don't recall any specific conversations.

We certainly had a number of conversations as lawyers do on opposite sides of cases and I'm sure I told him that we were going to call Mr. Morrissey as a witness and other details about the action. I don't recall anything more specific than that.

That same thing would apply to Mr. Sovel, who was working with Mr. Freedman as counsel against Mr. Olick and myself.

Q Thank you very much, Mr. Hess.

MR. MC INERNEY: No further questions.

MR. MINA: I have no questions of this witness, your Honor.

CROSS-EXAMINATION

BY MR. BERGADANO:

Q Mr. Hess, is it fair to describe your conversations with Mr. Freedman and Mr. Sovel as what we might call lawyer talk by adversaries in a case relating to that case?

A Yes.

Q And that's all it was, is that right, sir?

A Well, that's what it was.

Q Thank you.

MR. BERGADANO: No further questions.

MR. MC INERNEY: Thank you, Mr. Hess.

THE COURT: Thank you very much, Mr. Hess.

(Witness excused)

THE COURT: I think it would be a good time to take a luncheon recess. I had promised the jury that we would take a recess at 12:30 and we are missing the target by about three or four minutes, which I consider being quite good. I appreciate counsel's assisting the Court to that end.

Ladies and gentlemen, we will resume at 1:30. We will go to approximately 4:30. You can anticipate that.

Please do not discuss the case among yourselves, do not remain within the presence of any other person who might be discussing the case and keep an open mind on all facets of the case until it has been completed and given to you following the Court's charge.

The jury is excused and directed to return at 1:30 p.m.

Enjoy your lunch.

(Luncheon recess)

gtr51

AFTERNOON SESSION
2:00 p.m.

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen. We will resume.

Mr. McInerney.

MR. MC INERNEY: The plaintiff calls officer Fiore to the stand.

C A R M I N E F I O R E , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC INERNEY:

Q What is your occupation?

A Police officer, New York City.

Q And on July 1, 1971, what precinct were you stationed at?

THE COURT: Were you a police officer at that time?

THE WITNESS: Yes, sir.

Q What precinct were you stationed at?

A Sixth Precinct.

THE COURT: That is the Charles Street

Station?

THE WITNESS: Yes, sir. Right.

Q Do you have any independent recollection of the events of July 1, 1971?

A You mean from my memo book or my own --

THE COURT: If you were to put your memo book aside and if counsel asked you if you remember anything that happened in or about the NMU hall on that date, would you have any recollection ?

THE WITNESS: A vague recollection, you know, very little.

Q All right. Tell us what you remember on July 1, 1971, at the NMU hall?

A I remember when we got there we went through the side entrance and we went up in an elevator. They took us to the -- I don't know if it was the 11th floor. I can't remember the floor. Maybe I have it written down.

We went into an office and there was arguing and words exchanged and we went into the office and there were men there, they said they were the security and that they wanted a certain person arrested if he didn't, I think the story was.

So what happened was, the arguing kept going

on and then they insisted that he be arrested, and my partner, police officer Tuciarone, made the arrest because I was the operator and he was the recorder.

The recorder takes the arrest at the time if he is the recorder.

So he advised him of his rights and asked him to come along, and then from there we went to the station house, they went into the sitting room and made out a Vera summons and I waited for him. I was doing some other paper work that we had from other jobs. Then after that he came out and we left.

Q Do you remember what brought you to the NMU hall?

A At first we were called into the station house and he spoke to the sergeant or something about leaflets or something there, they were handing out leaflets.

Like I say, I can't remember too well. It's a very vague thing for me.

Q I ask you to just give us your best recollection.

A And then shortly after that we got a job, something related to disorderly man or something.

Q That came on the radio?

A Right, over the radio, and it was a call to go directly there. That's why we responded there.

Q Do you recognize the person who was arrested? Do you see him in this courtroom?

A Yes.

Q Would you point him out, please?

A That man right there (indicating).

THE COURT: Indicating the plaintiff, Mr. Morrissey.

Q Did you see Mr. Morrissey on July 1, 1971 doing anything inside the hall?

A No, I didn't see him do anything. I just saw them arguing with each other.

THE COURT: And this was upstairs?

THE WITNESS: Upstairs, yes.

THE COURT: You recall going upstairs somewhere in an elevator?

THE WITNESS: Yes. We went through a side entrance and went directly to an elevator and straight upstairs.

THE COURT: Was it when you got upstairs that you saw Mr. Morrissey for the first time?

THE WITNESS: Right, yes, in the office.

Q Do you remember how many police officers were

there on the scene?

A You mean downstairs?

Q Downstairs, upstairs, anywhere on the scene.

A Gee, I can't remember any other police officers besides me and my partner at the time.

Q May I see your memo book?

A Yes (handing).

Q Do you recall who it was that asked you to make the arrest at the union hall?

A There was one of the officials, probably security. I don't remember faces and names.

MR. MC INERNEY: I have no further questions.

CROSS-EXAMINATION

BY MR. MINA:

Q Patrolman Fiore, when you arrived at the union hall and there came to a point when you met with Mr. Morrissey and this security person, whoever it was, did you at that time tell Mr. Morrissey that they had said if he didn't stop he would be arrested?

A Not me particularly.

Q Were you there when it was said to him?

A Excuse me?

Q Were you there when that was said to him?

gtr56 Fiore-cross

A I could have been. It could have been said to him, but, like, I don't remember me saying it directly or hearing it directly, because my partner --

Q You do recall, however --

THE COURT: Wait a minute. Let him finish. What was it?

THE WITNESS: Because my partner was directly involved with this thing. He did all the talking and advising and whatnot. I was just standing by.

Q You do recall, however, that when you arrived there, Mr. Morrissey was told, again, to stop before he was arrested, is that correct?

A Well, they had -- you see, each side had their own argument, so, like, to me the whole thing, we didn't know what was going on when we got there.

You see, each one had their points of view and they were arguing and one would say, "Well, you have to leave," the other one would have to say, "Well, I have this right and I have that right."

So, like, it was back and forth. It was just all arguing.

Q About how long were you there?

A Upstairs? In the building itself, maybe 15 minutes, in the building itself.

Q Insofar as this arrest was concerned, do you happen to remember whether this happened to be the first arrest for either yourself or Patrolman Tuciarone?

A No.

MR. MINA: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BERGADANO:

Q Officer, do you remember who was present when you say they were having the argument that you mentioned in your testimony?

A Who was present?

Q Yes. Do you remember any names of any of the people?

A I don't remember any names or faces, but there were people there.

THE COURT: Aside from Mr. Morrissey, who you identified a few moments ago, do you see anyone else in this courtroom who you recall as having been present in that office on July 1, 1971?

THE WITNESS: I can't recall.

Q You received a radio call, you and your partner, officer Tuciarone, right?

A Right.

Q You were on patrol at that time?

A Yes.

Q Do you remember, sir, what the radio call said to you, what you were supposed to do, what the complaint was or whatever it may have been?

A I don't know if I have it written down here. I think it was disorderly man.

Q Disorderly man in the union hall?

A Excuse me?

Q In the union hall, the NMU building?

A Yes, in the union hall, yes.

Q Which was then on Seventh Avenue between 12th Street and 13th Street?

A Right.

Q And that was part of the Sixth Precinct, to which you were then assigned?

A Right.

Q And you are now assigned to --

A MTA, traffic division.

Q And when you arrived, sir, you said there was some kind of an argument going on, is that right?

A Yes.

Q And correct me if I am wrong, please, you said that they wanted him to leave and he wouldn't leave,

gtr59 Fiore-cross

or something to that effect?

A Something to the effect. Like, I can't state exactly what was said and what was the response.

Q Do you remember, Officer Fiore, where the arrest was made, whether it was made at the union hall or actually after Mr. Morrissey was taken to the police station?

A Well, he was placed under arrest upstairs. He was advised of his rights upstairs.

Q You gave him his rights and hewas then taken by you and officer Tuciarone to the police station, right?

A Right.

Q In the patrol car?

A Right.

Q Was there anyone else with you besides the three of you, you, your partner and Mr. Morrissey?

A There must have been a complainant, but I'm not sure if he was with us or he came after. Like, I can't remember too well.

Q Would it refresh your recollection, sir, if I reminded you that he went in a taxicab and came later?

A I think that sounds more realistic.

Q Do you remember, officer, what the discussion was? Did you hear what the discussion or argument was

gtr60 Fiore-cross

that Mr. Morrissey and the other people were having?

A I can't recall too well. A lot of yelling, a lot of argument. None of it made any sense because I didn't know what was going on.

Q Was it noisy, was it loud?

A It was loud, yes. A regular argument, you know, yelling back and forth.

Q And was that downstairs when you first came in or later, either way?

A Upstairs.

Q Do you remember, sir, first your own recollection, how long were you in the station house when Mr. Morrissey was being processed, as they call it?

A Well, I have the information --

Q First, do you remember? If you don't remember, you may look at your book.

A I have it in here.

It was somewhere a little over an hour, an hour and ten minutes.

Q The whole thing was a little over an hour?

A Right.

Q Did you ever put handcuffs on Mr. Morrissey? Do you remember?

A Well, I didn't. I'm trying to remember if my

partner did.

I can't remember too well. Usually we try not to, you know, in this situation.

Q Of your own knowledge, sir, was Mr. Morrissey ever locked up in the station house?

A Excuse me?

Q Was he ever locked up when he was in the station house? When I say locked up, did you put him in a cell or did he stay in the room and talk to your partner?

A To the best of my knowledge, he wasn't locked up. They went into the back sitting room.

Q And the whole thing took about an hour?

A About an hour and ten minutes, 15 minutes.

Q Then you went back on patrol?

A Right.

Q Thank you.

MR. BERGADANO: No further questions.

REDIRECT EXAMINATION

BY MR. MC INERNEY:

Q Did you yourself make a complaint against Mr. Morrissey?

A Myself?

Q Yes.

A No.

Q Did officer Tuciarone make a complaint against Mr. Morrissey?

MR.MINA: Objection.

MR. BERGADANO: Your Honor, objection.

We have documents in the record signed by officer Tuciarone. They speak for themselves.

THE COURT: I would suggest if there is a complaint and it is in writing, the writing would be the best evidence.

MR. MC INERNEY: Your Honor, there is a corroborating affidavit, it is not a complaint. I want to know if he knows of his own knowledge if officer Tuciarone made a complaint.

THE COURT: Let us ask him.

Do you know whether or not officer Tuciarone -- well, let's go back one step.

MR. BERGADANO: May I please, your Honor, refer you to Plaintiff's Exhibit 14 in evidence.

THE COURT: Let me see it, please.

MR. BERGADANO: As he said, the first sheet is in the officer's writing, the second one was typed up in the police department. (Handing to the Court)

Your Honor will recall that the plaintiff

gtr63 Fiore-redirect

introduced it on the testimony of district attorney Fishman this morning.

THE COURT: Isn't this the best evidence of who made a complaint, counsel, indicating Plaintiff's Exhibit 14 in evidence?

MR. MC INERNEY: Your Honor, I call your attention to the fact that he was arrested by the complainant which is checked there. It is not the officer's complaint but the complainant's complaint.

MR. BERGADANO: Your Honor, I object to counsel's categorization of it.

THE COURT: The document is in evidence, it speaks for itself. The jury will disregard the comments of counsel.

MR. BERGADANO: And this witness has testified just a few minutes ago that his partner made the arrest, the official police department arrest.

THE COURT: It would appear to me that these two officers placed the plaintiff here under arrest. That, I think, has been testified to.

Do you know, Patrolman Fiore, whether or not your partner filed any complaint report against Mr. Morrissey relative to this affair on July 1, 1971?

THE WITNESS: To the best of my knowledge,

gtr64 Fiore-redirect

he didn't. He was the arresting officer.

THE COURT: He was the arresting officer?

THE WITNESS: But he wasn't the complainant from the point that I left off with.

THE COURT: Anything else, sir?

Q When you were upstairs in the security office in the union hall, did anyone show any writing to either you or officer Tuciarone, that you can remember?

A I can't recall.

MR. MC INERNEY: I have no further questions.

MR. MINA: I have no further questions, your Honor.

MR. BERGADANO: No further questions.

THE COURT: Thank you, officer.

(Witness excused)

THE COURT: You may proceed, Mr. McInerney.

MR. MC INERNEY: Your Honor, I would like to put that one Pilot in evidence that we spoke about earlier.

THE COURT: Which one is that now? Let us go back.

MR. MC INERNEY: For what purpose, I have some preliminary questions.

Here it is. I will just hand it up to your

gtr65

Honor (handing).

I have checked the parts that I would like to have in evidence, your Honor.

THE COURT: You want to put in evidence a portion of the pilot, November 1967. You say you have checked it.

I don't see where the checkmarks are.

MR. MC INERNEY: I checked it very lightly, your Honor. I didn't want to have it --

THE COURT: So lightly that I don't see it.

Where is it?

I think I see it. Down here?

MR. MC INERNEY: Yes, beginning there, your Honor.

(Pause)

THE COURT: This document you show me, this article, appears, from the Court's observation, to be authored by Filiberto "Tony" Lucio.

MR. MC INERNEY: Yes, your Honor.

THE COURT: Mr. Lucio is not a party to this case.

MR. MC INERNEY: The NMU is, your Honor. It is the official organ of the NMU.

THE COURT: You want to introduce this only

against the NMU?

MR. MC INERNEY: Your Honor, I have about two or three pages out of Mr. Curran's deposition concerning it and would it be --

THE COURT: Wouldn't it be better for you to read from that?

MR. MC INERNEY: I don't have any questions on Mr. Curran's deposision relating to that, just marking it and then asking him these questions, your Honor (indicating).

THE COURT: Let me ask you something, counsel:

Can a union have malice, can a union be malicious? Isn't it necessary for individuals to have malice and to be malicious?

If you want to discuss the matter further at the side bar, gentlemen, I would be more than happy to, but that is my question, because that is the purpose of this offer.

(At the side bar)

MR. MC INERNEY: Are you addressing the question to me, your Honor?

THE COURT: Yes.

MR. MC INERNEY: First, may I take exception

gtr67

to the remark before the jury at this time.

My answer to it --

THE COURT: All right, stop a minute.

(In open court)

THE COURT: Counsel has objected to the last remark made by the Court.

I strike that remark from the record. I direct the jury to disregard it completely.

You understand that, ladies and gentlemen.

Very well.

(At the side bar)

THE COURT: You may proceed, sir.

MR. MC INERNEY: Your Honor, in answer to that question, I think it is answered in my trial brief that the union may be held for the acts of the officials and the malice of the officials may be attributed to the union, yes.

MR. MINA: Your Honor, may I be heard on this?

THE COURT: Yes.

MR. MINA: We would take the position that the law is very clear that if any of the named defendants were shown to be malicious, it is possible, depending on their position, that their maliciousness

gtr68

might be attributable to the union, but only through them.

The union as an entity does not really exist except through the members, can only be held to be malicious through maliciousness shown on the part of one of thedefendants.

The man who wrote this article is not even a defendant in this action.

THE COURT: No, he is not. That is what troubles me.

MR. MINA: And it is also an article written in 1967, as I recall.

THE COURT: Yes. It is remote in point of time and it is authored by someone other than a defendant in this case.

In other words, this is not an unidentified article which you might attribute to the editorial board, this is a signed article.

MR. MC INERNEY: Your Honor, I call your attention to the fact that Mr. Curran, who was a member of the editorial board, said it was a special article.

More than that, I have further questions, if your Honor will let me read them.

It is the only article that was ever put in

gtr69

in that fashion where a letter to the Pilot took up two pages and the picture of the man who authored the article.

In other words, what I am saying to you is this, although signed by Lucio, who knows who wrote it, but it certainly appears in the NMU Pilot and I can't think of anything -- it is the official organ of the union. It goes to the 50 states and Yokohama and Panama. If that is what Mr. Morrissey has to buck, every member of the union gets this.

Now, he certainly can't compete with a thing like that. He can't answer that. The malice grips all over it.

THE COURT: It is so remote from the time of the arrest that I am going to exclude it.

I have reconsidered something else at this point.

MR. MC INERNEY: Yes, your Honor.

THE COURT: I am going to permit you to put in the July-August 1971 extract. It is so close in point of time to the arrest that I think you should put that in.

This, on the other hand, is so remote that I going to exclude it.

gtr70

MR. BERGADANO: Again, your Honor, not as to my clients, obviously. This is being offered --

THE COURT: This is being offered against the union, that is correct.

So you have my ruling.

In other words, I am going to permit you to put in the July-August 1971 Pilot. That is so close to the events you complain of that on reflection I think that should go in.

This is remote in point of time, it appears on its face to be authored by someone other than a person who is a defendant in this case, and for this reason and the fact that it essentially is an inflammatory --

MR. MC INERNEY: There is no doubt about that.

THE COURT: That's right, inflammatory, it happened four years before the event and under the circumstances I am going to exclude it.

You have my ruling.

MR. MC INERNEY: Thank you, your Honor.

(In open court)

THE COURT: At this point, based on a side-bar discussion, I am going to reverse the ruling that I made to the offer of Plaintiff's Exhibit 9 for identification,

and if counsel for the defendants wish to object they may do so, but I am going to admit that portion of the Pilot and I am going to admit it at this time only against the NMU.

MR. BERGADANO: Thank you, your Honor.

MR. MC INERNEY: You are talking about the earlier offer?

THE COURT: Yes. That is now to be admitted into evidence, as I say, at this time only against the NMU.

So if you will give the clerk Plaintiff's Exhibit 9, I am going to have that received.

(Plaintiff's Exhibit No. 9 was received in evidence)

MR. BERGADANO: As we discussed, can we limit the recordings of the document, of this magazine, to the pertinent sections rather than the whole 60 or 70 or whatever it is pages?

THE COURT: Yes.

Ladies and gentlemen, what has been received here against the NMU only is a small portion of the union magazine, the Pilot, the July-August 1971 issue.

I believe the material is on either one or two pages of a 60 or 65-page issue, am I correct, counsel?

gtr72

MR. MC INERNEY: Page 4. It is the paragraph that begins, "Those are the main objectives our union has to work for at that time."

It is all on page 4 and it is just one full paragraph.

THE COURT: That is received, and if read to the jury thatis all that should be read.

MR. MC INERNEY: Should I read it now?

THE COURT: If you wish.

If shown to the jury, the only thing that will be shown or sent to the jury room is that page with the identification that it comes from the Pilot of July-August, 1971, and if read now I would caution the jury, again, this is being offered at this time or received at this time only against the National Maritime Union.

MR. MINA: May I clarify, again, I don't mean to do it twice, but so the jury is clear on it, when we say against the NMU, we are not talking about any of the individual defendants.

THE COURT: Not at this time.

MR. MC INERNEY: Your Honor, it is written by Joseph Curran?

THE COURT: Is it?

MR. MC INERNEY: Yes, sir.

gtr73

THE COURT: If that is the case, then -- let me see it.

MR. MC INERNEY: His picture and his name appear right in it.

THE COURT: Is it signed?

MR. MC INERNEY: It is not signed, but it --

THE COURT: It does say by Joseph Curran.

MR. MINA: At this point we just renew the objection previously made that this came after the arrest.

THE COURT: Yes. Well, we don't know. It is the July-August 1971 issue. Whether it was written on or before the date of the arrest is not known by the Court at the moment.

In any event, it appears to be close in point of time to the time of the arrest, although it is not clear from the record, as I see it, whether it was before, at or immediately after arrest that this was written.

In any event, I will permit the jury to consider this article, but only in their consideration of the case as it relates now to the union and to Mr. Curran.

MR. BERGADANO: Thank you, your Honor.

MR. MC INERNEY: This is reading from the NMU Pilot, the official organ of the NMU, page 4, and it is the July-August 1971 issue.

"Those are the main objectives our union has to work toward at this time. Of course, to assure our ability to concentrate on these vital goals, we must safequard our union against the disruption and division which a handful of dissidents again have been trying to create. The fact that this group has no membership support has been demonstrated time and again. However, by disrupting membership meetings and attempting to intimidate members, taking advantage of the Landrum-Griffin Law gives to disrupters within the unions, thev can hamper the effectiveness of the union's main efforts.

"We are confident that the membership will continue to demonstrate, as you have so often in the face of past disruptive efforts by these people, that their efforts will not be successful and that we will continue to work on positive programs to protect and advance the interests of the greatest majority of our members."

Your Honor, may I have the page that you excluded marked for identification.

THE COURT: I thought it had been already.

gtr75

MR. MC INERNEY: Had it been marked for identification?

THE COURT: All right. Let us identify it if it hasn't been. I thought you had, but if you hadn't, it will be 18, I guess.

MR. MC INERNEY: It hasn't been marked for identification.

THE COURT: It is the Pilot of what date?

MR. MC INERNEY: November 1967.

THE COURT: The Pilot of November 1967. Which pages?

MR. MC INERNEY: Pages 20 and 21.

THE COURT: You have offered those, have you, counsel?

MR. MC INERNEY: Yes, your Honor.

THE COURT: Are there objections?

MR. MINA: No objection, your Honor.

MR. BERGADANO: No objection.

MR. MINA: I am sorry, wait a minute.

MR. BERGADANO: Not as to my clients.

THE COURT: This is an offer now --

MR. MINA: No, we object.

THE COURT: I think you may not have heard me.

gtr76

MR. MINA: I'm sorry, your Honor.

THE COURT: There is an offer of the Pilot of November 1967 --

MR. MINA: Your Honor, we make the same objections we just made pursuant to the discussion at the bench.

MR. BERGADANO: It doesn't relate to my clients, your Honor, but I object as to remoteness in time.

THE COURT: Objection sustained.

MR. MC INERNEY: The plaintiff calls James Nimmo to the stand.

THE COURT: James Nimmo, please.

J A M E S N I M M O , called as a witness by the plaintiff, being first duly sworn, testified as follows:

THE COURT: Mr. McInerney, you were talking with your people during the administration of the oath.

The oath is a holy vow. It is not to be interrupted by any conversation for any purpose.

MR. MC INERNEY: Excuse me, your Honor.

THE COURT: Let us not have it happen again.

All right, you may proceed.

DIRECT EXAMINATION

BY MR. MC INERNEY:

Q On July 1, 1971, were you the master-at-arms at the door of the NMU hall?

A I think so. I'm not sure of the date.

THE COURT: Were you the master-at-arms at the door of the NMU hall on a date when James Morrissey was arrested by the police?

THE WITNESS: Yes.

Q On that day, you --

MR. MC INERNEY: Your Honor, may I have Mr. Nimmo declared to be a hostile witness?

THE COURT: Let us hear what he has to statement. He is an adverse party and I am prepared to let you lead him, but I don't think a declaration is necessary. So far he has answered the questions that have been put to him. Let's proceed.

MR. MC INERNEY: All right, your Honor.

Q Did you observe Mr. Morrissey within the union hall on July 1, 1971?

A Yes.

Q And when did you first observe him there?

A As soon as he came through the door.

Q When was that?

A Sometime that morning between 9 and 10 o'clock.

Q And thereafter -- and did you have a conversation with Mr. Morrissey?

A Yes.

Q What did you tell him?

A I told him to stop passing out literature inside the hearing hall.

Q And he told you that he had a First Amendment right to be there, didn't he?

MR. MINA: Objection, your Honor.

MR. BERGADANO: Objection.

THE COURT: Did he say that to you?

THE WITNESS: No, he did not.

THE COURT: Very well. Next question.

Q What did he say?

A He said he would not stop, that he would continue to pass them out.

Q And then what did you do?

A I left him alone.

Q Did there come a time you called Mr. Snow?

A Yes.

Q When was that?

A About an hour later.

gtr79 Nimmo-direct

Q What did you say to Snow?

A I told him that I had asked Mr. Morrissey to stop passing out literature and he refused.

Q And what did Snow tell you?

A He said to ask him again.

Q Who is Mr. Snow?

A He was chief of security.

Q And did you ask Morrissey again?

A Yes, I did.

Q And what did Mr. Morrissey tell you?

A He said he would not stop.

Q And then what did you say?

A I called Mr. Snow again. He said to keep asking him to stop passing out literature, if he continues to, to call the police.

Q Previous to July 1, 1971, did you know Morrissey?

A Yes.

Q And did you know he was a dissident?

A No, I did not.

MR. MINA: Objection.

MR. BERGADANO: Objection.

THE COURT: He has even answered your question for you, gentle[illegible]. He said no, he did not.

gtr80 Nimmo-direct

I will let it stand. Let's move on.

I would suggest in the future that you not ask questions clearly calling for a legal conclusion, sir. Let's proceed.

Q Well, what did you know about Morrissey?

A That he was a seaman, like me, that's all.

Q Did you know he had run for national office?

A Yes.

Q Did you know he had run against Mr. Wall?

A Yes.

Q And did you ask him to see his literature when he came into the hall?

A No, I did not.

Q Did there come a time you told Mr. Morrissey that you were going to have him arrested?

MR. MINA: In July 1st, 1971? I don't mean to add to the question.

THE COURT: Yes. I think the form of the question leaves it to some doubt.

The witness didn't say he didn't understand it and I assumed that date.

Q On July 1, 1971, did you tell Mr. Morrissey you were going to have him arrested?

A No, I did not.

gtr81 Nimmo-direct

Q Did you see anyone else distributing literature?

A I did not.

Q Did you sign an affidavit in connection with the prosecution in the criminal court?

A I don't understand the question.

Q Well, did you sign any papers in the criminal court?

A We went to the precinct. I signed something there.

Q Did you sign anything in the criminal court?

MR. BERGADANO: Your Honor, if your Honor please, I think the document speaks for itself and Mr. Fishman said it was in the complaint room of the district attorney's office in the courthouse. I think the witness may be confused between the courtroom and courthouse and complaint room.

THE COURT: If the witness is confused he will say so.

You said you thought you signed a docunent in the precinct.

THE WITNESS: Right.

THE COURT: Did there come a time when you left the precinct and went to some building downtown in Manhattan?

gtr82 Nimmo-direct

THE WITNESS: Right.

THE COURT: And when you got there, did you sign any other piece of paper, to your recollection?

THE WITNESS: No, I don't remember that.

THE COURT: You don't remember?

THE WITNESS: No.

THE COURT: All right. Do you want to show him something?

Q Mr. Nimmo, I show you this 11 in evidence, and I ask you, is that your signature that appears at the foot of that document (handing)?

A That's my signature, yes.

Q In this affidavit, it states, "Deponent further states that the defendant and several others were distributing literature in the hiring hall entrance inside the building."

Did you sign that affidavit?

MR. MINA: Objection.

MR. BERGADANO: Your Honor, he admitted he signed it, it is his signature.

THE COURT: Do you want to persist in that question, did you sign that affidavit?

Q Did you make that statement?

MR. MINA: Your Honor, I am going to object.

gtr83 • Nimmo-direct

THE COURT: It is the same question. He said he signed this piece of paper.

MR. MC INERNEY: I withdraw the question.

THE COURT: All right.

Q Now, were there several others inside the hearing hall?

A Not at that time.

Q Well, when were they there?

A After the police came some of the -- they were passing literature outside. After the police came, several other fellows came inside the building and they started distributing literature, or started distributing Mr. Morrissey's literature.

Q Did anyone instruct you to single out Morrissey?

A No.

Q Did you tell anyone else to stop passing out literature.

A He was the only one at the time.

Q Well, you said you saw some other people at some time --

A I said after the police came. They came inside in support of Mr. Morrissey.

Q Well, in any event, you took Mr. Morrissey

gtr84 Nimmo-direct

upstairs to Mr. Snow's office?

A Right.

Q And did you meet the police at the front door?

A They came in from the back door. They came in from the 12th Street entrance.

THE COURT: That is the side door?

THE WITNESS: Side door, right.

Q Where did you first see the police officers?

A They came up to me, came over to me at the door.

Q And what did you say to the police officers and what did they say to you?

A I told them that I asked Mr. Morrissey to stop passing out literature in the hiring hall and he refused.

Then they went over and talked to Mr. Morrissey.

Q And then what happened?

A Evidently he insisted on passing out literature. They came back over to me and I said, "Well, the only thing I can suggest is going up to see the chief of security."

Q And how many police were there?

A Two.

gtr85 Nimmo-direct

Q And those two policemen came in and saw you downstairs, is that right?

MR. BERGADANO: Your Honor, if I may, I think that it is not necessary.

THE COURT: I can't see how this witness could testify as to what these policemen saw, saw him.

I am going to sustain an objection, but let you inquire in the area.

MR. MC INERNEY: Your Honor, my question is, did he see the police officers downstairs.

THE COURT: All right. That is a fair question.

Go ahead.

A Well, it's on the main entrance, there is no downstairs. You come right in the door and as the master-at-arms I'm in uniform, so he came over to me after, you know, to find out what's happening.

Q And how many police officers were there on the main floor?

MR. MINA: Objection. Asked and answered. He just said two.

THE COURT: I thought he had, also, but I will let him answer again.

How many policemen did you see on the main

gtr86 Nimmo-direct

floor?

THE WITNESS: Two.

Q Did there come a time when the police officers said, "Let's go upstairs"?

A We went upstairs, yes.

Q Well, who suggested you go upstairs?

MR. BERGADANO: Your Honor, we are wasting time. Mr. Nimmo said the only thing I can suggest is we go upstairs to see the chief of security.

THE COURT: I heard that, too, but if he wants to ask it I am going to let him ask it.

A What was the question?

THE COURT: Mr. Reporter.

(Record read)

A Yes.

Q Now, when you went upstairs, where did you go?

A To the chief of security's office.

THE COURT: That is Mr. Snow's office?

THE WITNESS: Mr. Snow's office.

Q ANd what was said by whom and to whom in Mr. Snow's office?

MR. MINA: Objection, unless it is established that the witness was present.

gtr87 Nimmo-direct

THE COURT: Let's go back one step.

Did you go up to Mr. Snow's office?

THE WITNESS: I went to the office, I didn't go in.

THE COURT: You didn't go in.

Were you present during any conversations which took place when you went up to the office?

THE WITNESS: No, I wasn't.

Q Were you there when Mr. Snow said, "There is Mr. Nimmo, he'll be the complainant."

MR. BERGADANO: Your Honor --

MR. MINA: Objection.

THE COURT: I am going to overrule it.

Do you remember any such conversation?

THE WITNESS: No, I don't.

Q Well, after they went into the office, you remained outside?

A I went back down to my post at the door.

Q And did there come a time Morrissey came back downstairs, or what happened then?

A I received a call from Mr. Snow. I went upstairs and the officer said, "You have to go with us to the precinct to press charges against Mr. Morrissey."

THE COURT: The officer said that?

gtr88 Nimmo-direct

THE WITNESS: The officer said that.

THE COURT: Do you remember which of the officers?

THE WITNESS: No, I don't.

Q Mr. Nimmo, do you remember testifying in my office by deposition on January 30, 1970?

A Yes.

MR. BERGADANO: May we have the page, please?

MR. MC INERNEY: Page 68

I don't have a copy for your Honor. I don't know what happened to the original.

THE COURT: All right. I will permit you to read the questions and answers you wish to read. I will ask counsel to follow the matter in their own transcripts and I shall listen together with the jury.

MR. BERGADANO: Thank you, your Honor.

MR. MINA: Your Honor, I can read with Mr. Bergadano.

THE COURT: I appreciate that.

You are reading from page 68, I understand?

MR. MC INERNEY: Beginning on page 68. It is preliminary.

THE COURT: Go ahead.

gtr89 Nimmo-direct

MR. MC INERNEY: I will start with 67, your Honor.

Q "Do you remember whether or not anyone said anything to Mr. Snow?

"A Well, the officer wanted to know what it was all about."

Do you remember that question and the answer?

A No, I don't.

Q You don't remember that?

"Q And the officer asked Mr. Snow what it was all about?

"A Yes."

Do you remember that question and that answer?

A No.

Q "Q Then what did Mr. Snow say?

"A I didn't hear."

Do you remember that question and that answer?

MR. MINA: Your Honor, none of this has to do with refuting any of the testimony that this witness has just given.

THE COURT: That is for the jury to determine, counsel.

MR. BERGADANO: Your Honor, if --

THE COURT: It is their recollection of the prior testimony and the present testimony which will govern.

MR. BERGADANO: Yes.

Your Honor, if I may, the witness said he didn't go inside the office and there is no distinguishment here as to where this conversation took place, because they went to a floor, not a specific room or something.

MR. MC INERNEY: May I proceed, your Honor?

THE COURT: You may.

Q "Did Mr.Snow take the officer into his private office?

"A No, he was there with Mr. Morrissey."

THE COURT: In there.

Q ". . .in there with Mr. Morrissey."

Do you remember that question and that answer?

A Yes, they went into the office.

THE COURT: Continue.

MR. MC INERNEY: Now skip down to line 9.

THE COURT: No. I am going to ask the next one if you don't.

Q "Who was in where?

"A The office, Mr. Morrissey and Mr. Snow were in the inner office, I was in the outer office.

"Q Then what happened? Did Mr. Morrissey come back out with Snow in the office or did he come out with the officer alone?

"A I don't remember."

Now, do you remember those questions and those answers, Mr. Nimmo?

A Yes.

MR. MC INERNEY: Skipping down, your Honor, to page 69:

"Q Then what happened?

"A After they came back into the outer office, Mr. Morrissey was asked by Mr. Snow would he mind passing out" --

MR. MINA: Your Honor, again --

Q -- "would he mind passing his literature on the outside of the building, and he said no."

Do you remember that question and that answer?

A Yes.

Q "And he refused?

"A Right.

"Q And then what happened?

"A Then he said, 'Well, I have no alternative other than to have you arrested.'"

Do you remember that question and that answer?

A Yes.

Q Does that refresh your recollection thatit was Mr. Snow who said that?

MR. BERGADANO: Your Honor, I don't think it is refreshing the witness' recollection as to anything, because I don't think that question was asked before.

MR. MC INERNEY: All right, I will go down.

MR. BERGADANO: Excuse me, your Honor. He is attempting to say he is refreshing the witness' recollection as to what Mr. McInerney asked this witness in this courtroom, not back in his office. He is confusing the two, your Honor.

THE COURT: He is not confusing anything. He has examined a witness who he has indicated to me, and I take notice of, is an adverse party. I am going to permit him to examine in the fashion he is examining.

However, ladies and gentlemen, it is your recollect... of what he asked the witness before that will govern, and if when you come to deliberate on this

case your recollection differs from that of one of the lawyers or the Court, your recollection will govern, and you can buttress your recollection by having the court reporter read back anything that you can't recall clearly.

You may proceed, sir.

MR. MC INERNEY: Skipping down to 24.

Q "Then it was Snow that said he would have to have Morrissey arrested?

"A Yes."

Do you remember being asked that question and giving that answer?

A Yes.

Q "Q Then did the police officer take Morrissey away?

"A He went with the officers.

"Q Thereafter, did you have any conversation with anyone about this incident?

"A We went down to the precinct."

THE COURT: "I went down to the precinct."

Q "I went down to the precinct."

MR. BERGADANO: May we have the next question and answer read, your Honor?

THE COURT: No. If you want to read it

later, you can.

MR. BERGADANO: Thank you.

Q On page 71, line 6:

"Q Did anyone tell you to go down to the precinct?

"A Yes.

"Q Who told you to go down to the precinct?

"A Mr. Snow."

Do you remember those questions and those answers?

A Yes.

Q Now, was your recollection better when we took your testimony in my office on July 30, 1974, or is it better today?

MR. MINA: Objection. Mr. McInernev's question assumes there has been a contradiction and I think --

THE COURT: I will leave that to the jury.

He has asked another question which I will let the witness answer.

Is your recollection of the events of July 1, 1971 better today than it was on January 30, 1974 or was it better then than it is now?

THE WITNESS: It was better then.

gtr95 Nimmo-direct-cross

THE COURT: All right. Next question.

MR. MC INERNEY: Bear with me, your Honor. I'm sorry.

(Pause)

MR. MC INERNEY: I have no further questions of Mr. Nimmo.

THE COURT: Very well.

MR. MINA: Your Honor, in view of the fact --

THE COURT: No speeches.

MR. MINA: -- that I am representing Mr. Nimmo, what I would request, to save the Court's time and the jury's, is that I not be limited to cross-examination of him at this time, maybe I can get some direct testimony so that he doesn't have to come back.

It will be very short.

THE COURT: If it is going to be very short.

MR. MINA: Yes, your Honor.

THE COURT: I am prepared to permit that.

CROSS-EXAMINATION

BY MR. MINA:

Q Mr. Nimmo, on the date of the arrest, was there a notice posted in the union hall relating to the distribution of literature?

A Yes, there were several notices.

gtr96 Nimmo-cross

Q And did those notices relate to the fact that literature was not to be distributed in the union hall or in the hearing hall?

A Yes.

Q Could you tell the jury where you would direct people that they could distribute their literature in relationship to the union hall?

A At all the entrances to the building on either side of the street, in front of the building or behind the building or anywhere on the outside, even leading right up to the door, but not inside the building.

Q Had there been prior occasions on which you had had to ask Mr. Morrissey to go outside to distribute the literature?

A Yes.

Q And had he on all those prior occasions done so?

A Yes.

Q Was this the first time that Mr. Morrissey refused to go outside and distribute the literature?

A Yes.

Q When I say that, I mean that you were on duty.

A Right.

gtr97 Nimmo-cross

Q Between May 14 and July 1st, approximately how many days would you be on duty?

A Every day.

THE COURT: That is, five days a week?

THE WITNESS: Five days a week.

Q Could you tell the jury to the best of your recollection how many times you asked Mr. Morrissey to go outside on July 1, 1971 before the police finally got there?

A At least a half a dozen times.

Q Prior to the time that Mr. Morrissey was arrested on July 1, 1971, did you talk to anyone about Mr. Morrissey's distribution other than Mr. Snow?

A No, I did not.

MR. MINA: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. BERGADANO:

Q Mr. Nimmo, were there other people distributing literature in t hat period of time, in May, in June up to July of 1971 in the union hall? I mean, did other people come in and distribute literature during that period of time?

A No one, not inside.

gtr98 Nimmo-cross

Q So far as you recall, sir, Mr. Morrissey was the person who came in to distribute literature in that period of time?

A Yes.

Q And on the day he was arrested, that was the only day when he wouldn't go outside when you asked him to pass out his leaflets or whatever they were?

A That's correct.

Q And you asked him a lot of times before you even called Charlie Snow, right?

A Right.

Q And you asked him a few more times after you spoke to Charlie Snow?

A Right.

Q And you asked him before he was arrested even more?

A Right.

Q And he refused each time?

A Yes.

Q Only on that day?

A Only on that day.

Q Thank you, sir.

MR. BERGADANO: No further questions.

MR. MC TIERNEY: I have nothing, your Honor.

MR. MINA: Nothing, your Honor.

THE COURT: You are excused, sir. Thank you very much.

(Witness excused)

MR. MINA: Your Honor, can I have one minute, please?

THE COURT: Yes.

(Pause)

THE COURT: You may proceed, Mr. McInerney.

MR. MINA: Your Honor, I am, as usual, confused. I don't know what we are going back to at this point.

THE COURT: I am guessing -- I don't know, either -- but we did stop the deposition of Mr. Curran, the reading of that deposition, more or less in the middle while we took certain live witnesses.

I gather the live witnesses who were requested to be here have all been called now, is that right, counsel?

MR. MC INERNEY: Yes, your Honor, I believe so.

I don't know whether Mr. Wall is going to be here today or not.

Do you know anything about that?

gtr100

MR. MINA: I don't know why he should be today.

MR. MC INERNEY: I have been told he was served. I don't know.

THE COURT: Let us not have colloquy.

Apparently you have no other witnesses here --

MR. MC INERNEY: Not here. I don't see anyone here.

THE COURT: You are now returning to the deposition of Mr. Curran?

MR. MC INERNEY: Yes, your Honor.

THE COURT: Very well.

MR. MC INERNEY: I am trying to shorten it, your Honor.

On page 57, question 9 --

MR. MINA: Can you wait until we get to it?

MR. MC INERNEY: I will.

Page 57, line 9.

THE COURT: I think I had been at page 29, so let me move along.

MR. MC INERNEY: I am trying to shorten it, your Honor.

THE COURT: I appreciate that. My comment was

gtr101

not meant to be critical, it was merely to give me an opportunity to flip over some 28 pages.

Very well. Line what?

MR. MC INERNEY: Line 9.

I can start there if we can have a concession what the "it" refers to and it is the notice that we have been talking about in this case.

I can go back all the way.

THE COURT: In other words, what you are really asking on line 9, "Were notices posted in 1971 on the board in the new building?"

MR. MC INERNEY: That's right, your Honor.

THE COURT: Which was the new building being the hall at Seventh Avenue between 11th and 12th Streets.

MR. MC INERNEY: Yes, your Honor.

MR. BERGADANO: At that time.

THE COURT: All right. Let us pick it up with that.

"Q Was it, referring to the notices, posted in 1971 on the board in the new building?

"A I don't know.

"Q You yourself didn't see it, is that right?

"A That's right.

gtr102

"Q As president of the union, were you more or less kept informed of what went on in the national headquarters building?

"A Yes.

"Q Did there come a time that you were informed that one James Morrissey, the plaintiff in this action, had been arrested in the union building?

"A Yes.

"Q That arrest had taken place on July 1, 1971, is that correct?"

There was an objection. I withdraw that, your Honor.

THE COURT: I suggest you delete that question, the jury will disregard it.

Let us take the question beginning, if you wish, on the top of page 58.

"Q Mr. Morrissey had been arrested on July 1, 1971.

"Can you tell me when you were first informed that Mr. Morrissey had been arrested?

"A No, I can't tell you exactly, but it was a few days after that, after it happened.

"Q How did that information come to your attention?

gtr103

"A It was reported to me by several people. Among them was Charlie Snow, chief of security, and the agent at that time.

"Q Who was the agent, do you know?

"A Joe Labaczewski.

"Q Did anyone else mention the fact to you?

"A Well, several of the masters of arms, O'Connor and two or three others mentioned it within my hearing, but the specific information I got was from Charlie Snow and Joseph Labaczewski.

"Q When you heard it, did you have any conversations with anyone else about it?

"A I did. The conversation was about him refusing to stop distributing literature and they asked him about 16 times during the morning and he consistently refused to let up on it, gave everybody a big argument and finally he was told to go out of the hall and he wouldn't go out and I understood then he was arrested.

"Q Did you talk to Mr. Freedman or Mr. Sovel about it?

"A No, I did not.

"Q At no time since the time Morrissey had been arrested to the present you have not spoken to Mr. Freedman or Mr. Sovel about it?"

gtr104

I continue after an interruption.

"Q I am asking you, did you ever speak to Freedman or Sovel about it?

"A Where do I stand?

"Q You can answer yes or no, did you ever?

"A Yes.

"Q Who did you talk to about it, Mr. Freedman or Mr. Sovel?

"A Mr. Sovel.

"Q When did you have a conversation with Mr. Sovel about it?

"A I think a few days after it happened."

Skipping down to 60, line 23:

"Q Did you ever speak to Mr. Freedman about it?

"A Yes.

"Q When did you talk to Freedman about it?

"A Sometime after it happened.

"Q Was it within the span of a few days?

"A A couple of weeks, I think.

"Q A couple of weeks?

"A Yes."

Skipping to page 63, line 4, your Honor.

"Q When you spoke to Mr. Sovel a few days after July 1, 1971, did you do so specifically with regard to

gtr105

Mr. Morrissey's arrest?"

Excuse me --

THE COURT: Counsel, let's pass on. There was no answer to that question.

MR. BERGADANO: Line 16, your Honor, or 17.

MR. MC INERNEY: Line 16 there is an answer, your Honor.

"A I don't recall. I don't think so. I think it was in my office.

"Q You testified earlier a few days after Mr. Morrissey had been arrested on July 1, 1971, you had a conversation with Mr. Snow?

"A Yes.

"Q What did Mr. Snow tell you?

"A Well, he told me that he had tried to get Morrissey to stop distributing literature and Morrissey refused, kept refusing, and they finally had to put him out. He was disrupting the whole activities of the shipping floor. They couldn't carry on the shipping or anything because he and a couple of helpers that he had were putting out this literature all over the place, it was being messed up on the floor, the floor was covered with it and he created quite a disturbance so that they finally had to order him out and they wouldn't go out

gtr106

and the result was Morrissey was screaming at the top of his lungs at everybody and they had to have him arrested.

"Q Did he tell you how the police came to the scene?

"A No, he didn't.

"Q Did you ask him what Morrissey was passing out, what kind of literature?

"A No, because I had copies of what he was passing out. I didn't need to ask Charlie Snow. They always delivered some to me."

MR. MC INERNEY: Your Honor, I ask you to note that on the offers of the earlier evidence that we offered in and subject to connection. That was on Mr. Morrissey's pamphlets.

I would ask now that those pamphlets be introduced in evidence.

THE COURT: I will hear your adversaries.

MR. MINA: Your Honor, we object. Obviously because the fact that Mr. Curran says "They were delivered to me" is no indication that he knows how many came out or that he did, in fact, get those particular pamphlets from Mr. Morrissey.

THE COURT: Absent a specific identification